98TH CONGRESS
2d Session

COMMITTEE PRINT

WMCP: 98-31

COMPILATION
OF THE
SOCIAL SECURITY LAWS

INCLUDING THE SOCIAL SECURITY ACT,
AS AMENDED, AND RELATED ENACTMENTS
THROUGH APRIL 1, 1984

U.S. GOVERNMENT PRINTING OFFICE
33-736 O WASHINGTON: 1984

For sale by the Superintendent of Documents, U.S. Government Printing Office
Washington, D.C. 20402

H782-23

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THE SOCIAL SECURITY ADMINISTRATION

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PREFACE

The Social Security Act

The original Social Security Act is P.L. 74-271 (49 Stat. 620), approved August 14, 1935. The Social Security Act has been amended, in part, a number of times.

Administration of the Social Security Act

The Social Security Board was responsibile for administration of the original Social Security Act except for parts 1, 2, 3, and 5 of Title V (which were administered by the Children's Bureau, then in the Department of Labor); part 4 of Title V which increased the appropriations authorized for carrying out the Act of June 2, 1920 (now see Rehabilitation Act of 1973); and Title VI which authorized grants to the States for public health work.

The Social Security Board was transferred to the Federal Security Agency by Reorganization Plan No. 1 of 1939 and the Board's functions were thenceforth to be carried on under the direction and supervision of the Federal Security Administrator. Reorganization Plan No. 2 of 1946 transferred the functions of the Social Security Board, as well as the functions of the Children's Bureau and the functions of the Secretary of Labor under Title V of the Social Security Act, to the Federal Security Administrator and the Board was abolished.

The Bureau of Employment Security, with its unemployment compensation and employment service functions, was transferred from the Federal Security Agency to the Department of Labor by Reorganization Plan No. 2 of 1949.

The Department of Health, Education, and Welfare was established by Reorganization Plan No. 1 of 1953 with a Secretary of Health, Education, and Welfare as the head of the Department. All functions of the Federal Security Agency, which was abolished, were transferred to the Department of Health, Education, and Welfare. The functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare.

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services, and the Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by P.L. 96-88, §509, approved October 17, 1979. That public law did not amend references to the Secretary in the Social Security Act. The Department of Health and Human Services redesignation was effective May 4, 1980 (45 Federal Register 29642; May 5, 1980). The Department of Education which was established by P.L. 96-88 was activated May 4, 1980 (Executive Order 12212 of May 2, 1980; 45 Federal Register 29557; May 5, 1980).

This Compilation of the Social Security Laws

This compilation includes amendments made by all public laws enacted before April 1, 1984 [i.e., through P.L. 98-249]. This compilation contains:

(1) Table of Contents;
(2) The Social Security Act, as in effect April 1, 1984;
(3) Effective Dates;
(4) Internal Revenue Code—Selected Provisions; and
(5) Index to the Social Security Act.

Effect of Compilation

This Compilation of the Social Security Laws is not prima facie evidence of the provisions of the Social Security Act or other laws or statutes which are included. This compilation has been prepared solely for convenient reference purposes.

Caution

Although they are not a part of the text of the law, citations have been included which will enable the reader to locate the same material in the United States Code (U.S.C.). These matching citations to the United States Code are shown within brackets after the public law section, as, for example:

[Social Security Act] Sec. 201. [42 U.S.C. 401].

Thus, section 201 may be found in Title 42 of the United States Code, at section 401.

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[1]This table of contents does not appear in the law.

SOCIAL SECURITY ACT[1]

(As Amended through April 1, 1984)

AN ACT

To provide for the general welfare by establishing a system of Federal old-age benefits, and by enabling the several States to make more adequate provision for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a Social Security Board; to raise revenue; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[TITLE I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE[2] FOR THE AGED][3]

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APPROPRIATION

SECTION 1. [42 U.S.C. 301] For the purpose[5] of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to aged needy individuals[6], there is

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[1]P.L. 74-271, approved August 14, 1935, 49 Stat. 620.

[2]P.L. 97-35, §2184(a)(1), struck out "AND MEDICAL ASSISTANCE", effective August 13, 1981.

[3]Title I of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under Title I. The Administration for Public Services, Office of Human Development Services, administers social services under Title I.

Title I appears in the United States Code as §§301-306, subchapter I, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title I are contained in subtitle A and chapter XIII, Title 45, Code of Federal Regulations.

P.L. 92-603, §303, *repealed* Title I effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a Title I social services program if it chooses; see P.L. 94-241, approved March 24, 1976, 90 Stat. 263, [Covenant to Establish Northern Mariana Islands].

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions.

See P.L. 87-543, "Public Welfare Amendments of 1962", §141(b), with respect to ineligibility to receive payments under Title I where payments have been made under Title XVI.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 89-97, "Social Security Amendments of 1965", §121(b), with respect to restrictions on payment to a State receiving payments under Title XIX.

[4]This table of contents does not appear in the law.

[5]P.L. 97-35, §2184(a)(2)(A), struck out "(a)", effective August 13, 1981.

[6]P.L. 97-35, §2184(a)(2)(B), struck out subsections (b) and (c), effective August 13, 1981.

hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare[1] (hereinafter referred to as the "Secretary"), State plans for old-age assistance[2].

STATE OLD-AGE[3] PLANS

SEC. 2. [42 U.S.C. 302] (a) A State plan for old-age assistance[4] must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary[5] to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

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[1] This is deemed to refer, effective on May 4, 1980, to the Secretary of Health and Human Services under section 509(a) of the "Department of Education Organization Act" (P.L. 96-88, 93 Stat. 695).

[2] P.L. 97-35, §2184(a)(2)(C), struck out ", or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged", effective August 13, 1981.

[3] P.L. 97-35, §2184(a)(3)(A), struck out "AND MEDICAL ASSISTANCE", effective August 13, 1981.

[4] P.L. 97-35, §2184(a)(3)(B), struck out ", or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged", effective August 13, 1981.

[5] P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). Functions of the Commission were transferred, effective January 1, 1979, to the Director of the Office of Personnel Management by section 102 of Reorganization Plan No. 2 of 1978.

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;[1]

(B) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of such assistance to help them attain self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.[2]

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[1]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 90-248, "Social Security Amendments of 1967", §248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments made under that act.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to exclusion from income and resources of payments to volunteers under that act.

See P.L 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (see P.L. 86-372, §202).

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

[2]P.L. 97-35, §2184(a)(3)(C), struck out "; and" and substituted a period, effective August 13, 1981.

[(11), (12), (13) Stricken.[1]]

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title.

(c) Nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

PAYMENT TO STATES

SEC. 3. [42 U.S.C. 303] (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1960—

[(1) Stricken.[2]]

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as old-age assistance under the State plan, not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of old-age assistance for such month; plus[3]

[(3) Stricken.[4]]

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

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Executed as if this amendment had struck out only the semicolon.

[1] P.L. 97-35, §2184(a)(3)(D), struck out paragraphs (11), (12), and (13), effective August 13, 1981.

[2] P.L. 97-35, §2184(a)(4)(A), struck out paragraph (1), effective August 13, 1981.

[3] P.L. 97-35, §2184(a)(4)(B), amended paragraph (2) in its entirety, effective August 13, 1981.

[4] P.L. 97-35, §2184(a)(4)(A), struck out paragraph (3), effective August 13, 1981.

(B) one-half of the remainder of such expenditures.[1]

[(5) Stricken.[2]]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary for such prior quarter: *Provided,* That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement[3] of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

[(c) Repealed.[4]]

[(d) Stricken.[5]]

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[1] P.L. 97-35, §2353(a)(1)(A), amended paragraph (4) in its entirety, effective October 1, 1981.
[2] P.L. 97-35, §2353(a)(1)(B), struck out paragraph (5), effective October 1, 1981.
[3] As in original.
[4] P.L. 97-35, §2353(a)(2), repealed subsection (c), effective October 1, 1981.
[5] P.L. 97-35, §2184(a)(4)(C), struck out subsection (d), effective August 13, 1981.

OPERATION OF STATE PLANS

SEC. 4. [42 U.S.C. 304] In the case of any State plan which has been approved under this title by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 2(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 2(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

[SEC. 5. Repealed.[1]]

DEFINITION[2]

SEC. 6. [42 U.S.C. 306] (a)[3] For the purposes of this title, the term "old-age assistance" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for assistance) medical care in behalf of or any type of remedial care recognized under State law in behalf of, needy individuals who are 65 years of age or older, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution). Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 2 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such assistance through payments described in this sentence;

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[1] P.L. 92-603, §303(a); 86 Stat. 1484.
The P.L. 92-603, §303(b), repeal exception is deemed not applicable to §5 because it was executed with expenditure of the appropriation for the fiscal year ending June 30, 1936, and never became applicable to Puerto Rico, Guam, or the Virgin Islands.

[2] As in original. P.L. 86-778, §601(f)(2), [74 Stat. 991], did not amend the catchline.

[3] As in original; "(a)" should be stricken.

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of old-age assistance to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of assistance under such plan.

[(b), (c) Stricken.[2]]

[1] As in original. Should be "needs".

[2] P.L. 97-35, §2184(a)(5), struck out subsections (b) and (c), effective August 13, 1981.

TITLE II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS[1]

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[1]Title II of the Social Security Act is administered by the Social Security Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). Title II appears in the United States Code as §§401-433, subchapter II, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title II are contained in chapter III, Title 20, Code of Federal Regulations.

See P.L. 79-291, [Title I, "International Organizations Immunities Act"], §5(b), with respect to benefits based on services for international organizations.

See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §503, with respect to preservation of medicaid eligibiliy for individuals who cease to be eligible for supplemental security income benefits on account of cost-of-living increases in social security benefits.

See P.L. 95-608, "Indian Child Welfare Act of 1978", §§201-204, with respect to Indian child and family programs.

See P.L. 96-265, "Social Security Disability Amendments of 1980", §505, with respect to authority for demonstration projects.

See P.L. 97-123, [Amendments to P.L. 97-35], §7, with respect to report to Congress on preventing payments to deceased individuals.

See P.L. 98-4, "Payment-in-Kind Tax Treatment Act of 1983", §§2(a) and 3(b)(4), with respect to the treatment of agricultural commodities received under a 1983 payment-in-kind program.

See P.L. 98-21, "Social Security Amendments of 1983", §101(e), with respect to the effect of amendments made by that law on benefits under the Federal Retirement System.

See P.L. 98-21, "Social Security Amendments of 1983", §201(d), with respect to a study of the effect of the change in retirement age.

See P.L. 98-21, "Social Security Amendments of 1983", §310(b), with respect to validity of payments made, before April 20, 1983, as a result of a judicial determination.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency.

See P.L. 98-21, "Social Security Amendments of 1983", §405, with respect to notification of Title II beneficiaries of the supplemental security income program.

[2]This table of contents does not appear in the law.

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FEDERAL OLD-AGE AND SURVIVORS INSURANCE TRUST FUND AND FEDERAL DISABILITY INSURANCE TRUST FUND[1]

SECTION 201. [42 U.S.C. 401] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Old-Age and Survivors Insurance Trust Fund". The

[1]See 14 U.S.C. 707(e)(3) with respect to the requirement for certification to the Secretary of Labor of an individual's insured status.

See P.L. 95-250, [Redwood National Park], §201(19), with respect to trust fund contributions and §204(b)(4), with respect to Title XVIII ineligibility.

See P.L. 96-265, "Social Security Disability Amendments of 1980", §312, with respect to the Secretary's report to Congress on the effect of certain amendments affecting claims for disability insurance benefits.

See P.L. 98-21, "Social Security Amendments of 1983", §121(e), with respect to transfers of funds from the Secretary of the Treasury to the Trust Fund.

See P.L. 98-21, "Social Security Amendments of 1983", §151(b)(3), with respect to certain reimbursements to the trust funds.

See P.L. 98-21, "Social Security Amendments of 1983", §152(c), with respect to crediting amounts of unnegotiated checks to trust funds.

See P.L. 98-21, "Social Security Amendments of 1983", §153, with respect to a study of float periods and report to the President and Congress.

See P.L. 98-168, [Federal Physicians Comparability Allowance], §§201-208, with respect to certain Federal employees covered under both the Social Security Act and a Federal retirement system.

Federal Old-Age and Survivors Insurance Trust Fund shall consist of the securities held by the Secretary of the Treasury for the Old-Age Reserve Account and the amount standing to the credit of the Old-Age Reserve Account on the books of the Treasury on January 1, 1940, which securities and amount the Secretary of the Treasury is authorized and directed to transfer to the Federal Old-Age and Survivors Insurance Trust Fund, and, in addition, such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, the Federal Old-Age and Survivors Insurance Trust Fund as hereinafter provided. There is hereby appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1941, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes (including interest, penalties, and additions to the taxes) received under subchapter A of chapter 9 of the Internal Revenue Code of 1939[1] (and covered into the Treasury) which are deposited into the Treasury by collectors of internal revenue before January 1, 1951; and

(2) the taxes certified each month by the Commissioner of Internal Revenue as taxes received under subchapter A of chapter 9 of such Code[2] which are deposited into the Treasury by collectors of internal revenue after December 31, 1950, and before January 1, 1953, with respect to assessments of such taxes made before January 1, 1951; and

(3) the taxes imposed by subchapter A of chapter 9 of such Code[3] with respect to wages (as defined in section 1426 of such Code[4]), and by chapter 21 (other than sections 3101(b) and 3111(b)) of the Internal Revenue Code of 1954[5] with respect to wages (as defined in section 3121 of such Code[6]) reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939[7] after December 31, 1950, or to the Secretary of the Treasury or his delegates pursuant to subtitle F of the Internal Revenue Code of 1954[8] after December 31, 1954, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such subchapter or chapter 21[9] (other than sections 3101(b) and 3111(b)) to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare[10] on the basis of the records of wages established and maintained by such Secretary in accordance with such reports, less the amounts specified in clause (1) of subsection (b) of this section; and

(4) the taxes imposed by subchapter E of chapter 1 of the Internal Revenue Code of 1939[11], with respect to self-employment income (as defined in section 481 of such Code[12]), and by chapter

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[1]P.L. 76-1.
[2]P.L. 76-1.
[3]P.L. 76-1.
[4]P.L. 76-1.
[5]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 21, p. 813.
[6]See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.
[7]P.L. 76-1.
[8]P.L. 83-591.
[9]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 21, p. 813.
[10]This is deemed to refer to the Secretary of Health and Human Services under §509(a) of the "Department of Education Organization Act" (P.L. 96-88; 93 Stat. 695).
[11]P.L. 76-1.
[12]P.L. 76-1.

2 (other than section 1401(b)) of the Internal Revenue Code of 1954[1] with respect to self-employment income (as defined in section 1402 of such Code[2]) reported to the Commissioner of Internal Revenue on tax returns under such subchapter or to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code[3], as determined by the Secretary of the Treasury by applying the applicable rate of tax under such subchapter or chapter (other than section 1401(b)) to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns, less the amounts specified in clause (2) of subsection (b) of this section.

The amounts appropriated by clauses (3) and (4) shall be transferred monthly on the first day of each calendar month[4] from the general fund in the Treasury to the Federal Old-Age and Survivors Insurance Trust Fund, and the amounts appropriated by clauses (1) and (2) of subsection (b) shall be transferred monthly on the first day of each calendar month[5] from the general fund in the Treasury to the Federal Disability Insurance Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in clauses (3) and (4) of this subsection, to be paid to or deposited into the Treasury during such month[6]; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such clauses (3) and (4) of this subsection. All amounts transferred to either Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the other assets of such Trust Fund; and such Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of such Fund in the same month under subsection (d).[7]

(b) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1), and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is hereby appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter,

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 2, p. 803.
[2]See P.L. 83-591, "Internal Revenue Code of 1954", §1402, p. 804.
[3]P.L. 83-591.
[4]P.L. 98-21, §141(a)(1)(A), struck out "from time to time" and substituted "monthly on the first day of each calendar month", effective May 1, 1983.
[5]P.L. 98-21, §141(a)(1)(A), struck out "from time to time" and substituted "monthly on the first day of each calendar month", effective May 1, 1983.
[6]P.L. 98-21, §141(a)(1)(B), struck out "paid to or deposited into the Treasury" and substituted "to be paid to or deposited into the Treasury during such month", effective May 1, 1983.
[7]P.L. 98-21, §141(a)(2), added the preceding sentence, effective May 1, 1983.

out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) ½ of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954[1]) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954[2], (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1980, and so reported, (I) 1.12 per centum of the wages (as so defined) paid after December 31, 1979, and before January 1, 1981, and so reported, (J) 1.30 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1982, and so reported, (K) 1.65 per centum of the wages (as so defined) paid after December 31, 1981, and before January 1, 1983, and so reported,[3] (L) 1.25 per centum of the wages (as so defined) paid after December 31, 1982, and before January 1, 1984, and so reported,[4] (M) 1.00 per centum of the wages (as so defined) paid after December 31, 1983, and before January 1, 1988, and so reported,[5] (N) 1.06 per centum of the wages (as so defined) paid after December 31, 1987, and before January 1, 1990, and so reported,[6] (O) 1.20 per centum of the wages (as so defined) paid after December 31, 1989, and before January 1, 2000, and so reported, and[7] (P) 1.42 per centum of the wages (as so defined) paid after December 31, 1999, and so reported,[8] which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) ⅜ of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954[9]) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954[10] for any taxable year beginning after December 31,

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.
[2]P.L. 83-591.
[3]P.L. 98-21, §126(a), amended subparagraph (K) in its entirety, effective April 20, 1983.
[4]P.L. 98-21, §126(a), amended subparagraph (L) in its entirety, effective April 20, 1983.
[5]P.L. 98-21, §126(a), amended subparagraph (M) in its entirety, effective April 20, 1983.
[6]P.L. 98-21, §126(a), added subparagraph (N), effective April 20, 1983.
[7]P.L. 98-21, §126(a), added subparagraph (O), effective April 20, 1983.
[8]P.L. 98-21, §126(a), added subparagraph (P), effective April 20, 1983.
[9]See P.L. 83-591, "Internal Revenue Code of 1954", §1402, p. 804.
[10]P.L. 83-591.

1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1980, (I) 0.7775 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1979, and before January 1, 1981, (J) 0.9750 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1982, (K) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1981, and before January 1, 1983,[1] (L) 0.9375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1982, and before January 1, 1984,[2] (M) 1.00 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1983, and before January 1, 1988,[3] (N) 1.06 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1987, and before January 1, 1990,[4] (O) 1.20 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, and before January 1, 2000, and[5] (P) 1.42 per centum of the self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1999,[6] which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

(c) With respect to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund (hereinafter in this title called the "Trust Funds") there is hereby created a

[1] P.L. 98-21, §126(b), amended subparagraph (K) in its entirety, effective April 20, 1983.
[2] P.L. 98-21, §126(b), amended subparagraph (L) in its entirety, effective April 20, 1983.
[3] P.L. 98-21, §126(b), amended subparagraph (M) in its entirety, effective April 20, 1983.
[4] P.L. 98-21, §126(b), added subparagraph (N), effective April 20, 1983.
[5] P.L. 98-21, §126(b), added subparagraph (O), effective April 20, 1983.
[6] P.L. 98-21, §126(b), added subparagraph (P), effective April 20, 1983.

body to be known as the Board of Trustees of the Trust Funds (hereinafter in this title called the "Board of Trustees") which Board of Trustees shall be composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate[1]. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this title called the "Managing Trustee"). The Commissioner of Social Security shall serve as Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Funds;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Funds during the preceding fiscal year and on their expected operation and status during the next ensuing five fiscal years;[2]

(3) Report immediately to the Congress whenever the Board of Trustees is of the opinion that the amount of either of the Trust Funds is unduly small;

(4) Recommend improvements in administrative procedures and policies designed to effectuate the proper coordination of the old-age and survivors insurance and Federal-State unemployment compensation program; and

(5) Review the general policies followed in managing the Trust Funds, and recommend changes in such policies, including necessary changes in the provisions of the law which govern the way in which the Trust Funds are to be managed.

The report provided for in paragraph (2) above shall include a statement of the assets of, and the disbursements made from, the Trust Funds during the preceding fiscal year, an estimate of the expected future income to, and disbursements to be made from, the Trust Funds during each of the next ensuing five fiscal years, and a statement of the actuarial status of the Trust Funds. Such report shall include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall also include[3] an actuarial analysis of the benefit disbursements made from the Federal Old-Age and Survivors Insurance Trust Fund with respect to disabled beneficiaries. Such report shall be printed as a House document of the session of the Congress to which the report is made.

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[1]P.L. 98-21, §341(a)(1), struck out ", Education, and Welfare, all ex officio" and substituted "and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate", effective April 20, 1983.

[2]See P.L. 98-21, "Social Security Amendments of 1983", §154(d), with respect to the due date of the annual report of the Boards of Trustees of the Trust Funds for 1983.

[3]P.L. 98-21, §154(a), struck out "also include" and substituted "include an actuarial opinion by the Chief Actuary of the Social Security Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided*, That the certification shall not refer to economic assumptions underlying the Trustee's report, and shall also include", effective April 20, 1983.

A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Funds.[1]

(d) It shall be the duty of the Managing Trustee to invest such portion of the Trust Funds as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act[2], as amended, are hereby extended to authorize the issuance at par of public-debt obligation[3] for purchase by the Trust Funds. Such obligations issued for purchase by the Trust Funds shall have maturities fixed with due regard for the needs of the Trust Funds and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of four years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest of such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(e) Any obligations acquired by the Trust Funds (except public-debt obligations issued exclusively to the Trust Funds) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(f) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund shall be credited to and form a part of the Federal Old-Age and Survivors Insurance Trust Fund and the Disability Insurance Trust Fund, respectively.

(g)(1)(A) The Managing Trustee of the Trust Funds (which for purposes of this paragraph shall include also the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund established by title XVIII) is directed to pay from the Trust Funds into the Treasury—

(i) the amounts estimated by him and the Secretary of Health, Education, and Welfare which will be expended, out of moneys appropriated from the general fund in the Treasury, during a three-month period by the Department of Health, Education,

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[1]P.L. 98-21, §341(a)(2), added the preceding sentence, effective April 20, 1983.

[2]P.L. 97-258, §5(b) [96 Stat. 1068, 1072], repealed the Second Liberty Bond Act [P.L. 65-43; Act of September 24, 1917; Chapter 56; 40 Stat. 288]. Under P.L. 97-258, §4(b), references to the Second Liberty Bond Act are deemed to be references to corresponding provisions of Title 31 of the United States Code. See, instead, Chapter 31 of Title 31 of the U.S. Code.

[3]As in original. Should be "obligations".

and Welfare and the Treasury Department for the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939[1], and chapters 2 and 21 of the Internal Revenue Code of 1954[2], less

(ii) the amounts estimated (pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection) by the Secretary of Health, Education, and Welfare which will be expended, out of moneys made available for expenditures from the Trust Funds, during such three-month period to cover the cost of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954[3] other than those referred to in clause (i).[4]

Such payments shall be carried into the Treasury as the net amount of repayments due the general fund account for reimbursement of expenses incurred in connection with the administration of titles II, XVI, and XVIII of this Act and subchapter E of chapter 1 and subchapter A of chapter 9 of the Internal Revenue Code of 1939[5], and chapters 2 and 21 of the Internal Revenue Code of 1954[6]. A final accounting of such payments for any fiscal year shall be made at the earliest practicable date after the close thereof. There are hereby authorized to be made available for expenditure, out of any or all of the Trust Funds, such amounts as the Congress may deem appropriate to pay the costs of the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954[7] other than those referred to in clause (i) of the first sentence of this subparagraph.

(B) After the close of each fiscal year the Secretary of Health, Education, and Welfare shall determine the portion of the costs, incurred during such fiscal year, of administration of this title, title XVI, and title XVIII and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954[8] (other than those referred to in clauses[9] (i) of the first sentence of subparagraph (A)), which should have been borne by the general fund in the Treasury and the portion of such costs which should have been borne by each of the Trust Funds; except that the determination of the amounts to be borne by the general fund in the Treasury with respect to expenditures incurred in carrying out such functions specified in section 232 shall be made pursuant to the method prescribed by the Board of Trustees under paragraph (4) of this subsection. After such determination has been

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[1]P.L. 76-1.
[2]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 2, p. 803.
[3]P.L. 83-591.
[4]See P.L. 94-202, [Social Security—Hearings and Review Procedures], §8(f), with respect to making the estimates required under this clause.
[5]P.L. 76-1.
[6]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 2, p. 803.
[7]P.L. 83-591.
[8]P.L. 83-591.
[9]As in original. Should be "clause".

made, the Secretary of Health, Education, and Welfare shall certify to the Managing Trustee the amounts, if any, which should be transferred from one to any of the other of such Trust Funds and the amounts, if any, which should be transferred between the Trust Funds (or one of the Trust Funds) and the general fund in the Treasury, in order to insure that each of the Trust Funds and the general fund in the Treasury have borne their proper share of the costs, incurred during such fiscal year, for the part of the administration of this title, title XVI, and title XVIII for which the Secretary of Health, Education, and Welfare is responsible and of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954[1] (other than those referred to in clause (i) of the first sentence of subparagraph (A)). The Managing Trustee is authorized and directed to transfer any such amounts in accordance with any certification so made.

(2) The Managing Trustee is directed to pay from time to time from the Trust Funds into the Treasury the amount estimated by him as taxes imposed under section 3101(a) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954[2] with respect to wages (as defined in section 1426 of the Internal Revenue Code of 1939[3] and section 3121 of the Internal Revenue Code of 1954[4]) paid after December 31, 1950. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Commissioner of Internal Revenue pursuant to section 1420(c) of the Internal Revenue Code of 1939[5] and to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, and the Secretary shall furnish the Managing Trustee such information as may be required by the Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections. Payments pursuant to the first sentence of this paragraph shall be made from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund in the ratio in which amounts were appropriated to such Trust Funds under clause (3) of subsection (a) of this section and clause (1) of subsection (b) of this section.

(3) Repayments made under paragraph (1) or (2) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under either such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(4) The Board of Trustees shall prescribe before January 1, 1981, the method of determining the costs which should be borne by the general fund in the Treasury of carrying out the functions of the Department of Health, Education, and Welfare, specified in section 232, which relate to the administration of provisions of the Internal Revenue Code of 1954[6] (other than those referred to in clause (i) of

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[1] P.L. 83-591.
[2] See P.L. 83-591, "Internal Revenue Code of 1954", §3101(a), p. 813.
[3] P.L. 76-1.
[4] See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.
[5] P.L. 76-1.
[6] P.L. 83-591.

the first sentence of paragraph (1)(A)). If at any time or times thereafter the Boards of Trustees of such Trust Funds deem such action advisable they may modify the method so determined.[1]

(h) Benefit payments required to be made under section 223, and benefit payments required to be made under subsection (b), (c), or (d) of section 202 to individuals entitled to benefits on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, shall be made only from the Federal Disability Insurance Trust Fund. All other benefit payments required to be made under this title (other than section 226) shall be made only from the Federal Old-Age and Survivors Insurance Trust Fund.

(i)(1) The Managing Trustee of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund is authorized to accept on behalf of the United States money gifts and bequests made unconditionally to any one or more of such Trust Funds or to the Department of Health, Education, and Welfare, or any part or officer thereof, for the benefit of any of such Funds or any activity financed through such Funds.

(2) Any such gift accepted pursuant to the authority granted in paragraph (1) of this subsection shall be deposited in—

(A) the specific trust fund designated by the donor or

(B) if the donor has not so designated, the Federal Old-Age and Survivors Insurance Trust Fund.

(j) There are authorized to be made available for expenditure, out of the Federal Old-Age and Survivors Insurance Trust Fund, or the Federal Disability Insurance Trust Fund (as determined appropriate by the Secretary), such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Secretary in connection with disability determinations under this title, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 210(i)) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.

(k) Expenditures made for experiments and demonstration projects under section 505(a) of the Social Security Disability Amendments of 1980[2] shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Secretary.

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[1] See P.L. 94-202, [Social Security—Hearings and Review Procedures], §8(e), with respect to employment of assistants.

[2] P.L. 96-265, approved June 9, 1980 (94 Stat. 441).

(l)(1) If at any time prior to January 1988[1] the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee may borrow such amounts as he determines to be appropriate from the other such Trust Fund, or, subject to paragraph (5),[2] from the Federal Hospital Insurance Trust Fund established under section 1817, for transfer to and deposit in the Trust Fund whose need for financing is involved.

(2) In any case where a loan has been made to a Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made[3], from the borrowing Trust Fund to the lending Trust Fund, the total interest accrued to such day[4] with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (d) (even if such an investment would earn interest at a rate different than[5] the rate earned by investments redeemed by the lending fund in order to make the loan)[6].

(3)(A)[7] If in any month after a loan has been made to a Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Hospital Insurance Trust Fund to the Federal Old-Age and Survivors[8] Trust Fund or the Federal Disability Insurance Trust Fund, the Managing Trustee determines that the OASDI trust fund ratio exceeds 15 percent, he shall transfer from the borrowing Trust Fund to the Federal Hospital Insurance Trust Fund an amount that—

(I) together with any amounts transferred from another borrowing Trust Fund under this paragraph for such year, will reduce the OASDI trust fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "OASDI trust fund ratio" means, with respect to any calendar year, the ratio of—

(I) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, as of the last day of such calendar year, to

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[1] P.L. 98-21, §142(a)(1)(A), struck out "1983" and substituted "1988", effective April 20, 1983.

[2] P.L. 98-21, §142(a)(1)(B), inserted ", subject to paragraph (5),", effective April 20, 1983.

[3] P.L. 98-21, §142(a)(2)(A)(i), struck out "from time to time" and substituted "on the last day of each month after such loan is made", effective with respect to months after May 1983.

[4] P.L. 98-21, §142(a)(2)(A)(ii), struck out "interest" and substituted "the total interest accrued to such day", effective with respect to months after May 1983.

[5] As in original. Should be "from".

[6] P.L. 98-21, §142(a)(2)(A)(iii), inserted "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)", effective with respect to months after May 1983.

[7] P.L. 98-21, §142(a)(3)(A), inserted "(A)", effective April 20, 1983.

[8] As in original. "Insurance" omitted.

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the calendar year following such calendar year for all purposes authorized by section 201 (other than payments of interest on, and repayments of, loans from the Federal Hospital Insurance Trust Fund under paragraph (1), but excluding any transfer payments between such trust funds and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account).[1]

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987, and before January 1, 1990, the Managing Trustee shall transfer each month to the Federal Hospital Insurance Trust Fund from any Trust Fund with any amount outstanding on a loan made from the Federal Hospital Insurance Trust Fund under paragraph (1) an amount not less than an amount equal to (I) the amount owed to the Federal Hospital Insurance Trust Fund by such Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.[2]

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.[3]

(5)(A) No amounts may be borrowed from the Federal Hospital Insurance Trust Fund under paragraph (1) during any month if the Hospital Insurance Trust Fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any month, the ratio of—

(i) the balance in the Federal Hospital Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under this subsection, as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Hospital Insurance Trust Fund during the month for which such ratio is to be determined (other than payments of interest on, or repayments of loans from another Trust Fund under this subsection), and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfer into the Hospital Insurance Trust Fund from that Account.[4]

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[1] P.L. 98-21, §142(a)(3)(B), added this subparagraph, effective April 20, 1983.
[2] P.L. 98-21, §142(a)(3)(B), added this subparagraph, effective April 20, 1983.
[3] P.L. 97-123, §1(a), added subsection (l), effective December 29, 1981.
[4] P.L. 98-21, §142(a)(4), added paragraph (5), effective April 20, 1983.

(m)(1) The Secretary of the Treasury shall implement procedures to permit the identification of each check issued for benefits under this title that has not been presented for payment by the close of the sixth month following the month of its issuance.

(2) The Secretary of the Treasury shall, on a monthly basis, credit each of the Trust Funds for the amount of all benefit checks (including interest thereon) drawn on such Trust Fund more than 6 months previously but not presented for payment and not previously credited to such Trust Fund, to the extent provided in advance in appropriation Acts.

(3) If a benefit check is presented for payment to the Treasury and the amount thereof has been previously credited pursuant to paragraph (2) to one of the Trust Funds, the Secretary of the Treasury shall nevertheless pay such check, if otherwise proper, recharge such Trust Fund, and notify the Secretary of Health and Human Services.

(4) A benefit check bearing a current date may be issued to an individual who did not negotiate the original benefit check and who surrenders such check for cancellation if the Secretary of the Treasury determines it is necessary to effect proper payment of benefits.[1]

OLD-AGE AND SURVIVORS INSURANCE BENEFIT PAYMENTS[2]

Old-Age Insurance Benefits[3]

SEC. 202. [42 U.S.C. 402] (a) Every individual who—

(1) is a fully insured individual (as defined in section 214(a)),

(2) has attained age 62, and

(3) has filed application for old-age insurance benefits or was entitled to disability insurance benefits for the month preceding the month in which he attained the retirement age (as defined in section 216(l))[4],

shall be entitled to an old-age insurance benefit for each month, beginning with—

(A) in the case of an individual who has attained retirement age (as defined in section 216(l))[5], the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

(B) in the case of an individual who has attained age 62, but has not attained retirement age (as defined in section 216(l))[6], the

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[1] P.L. 98-21, §152(a), added subsection (m), effective with respect to all checks for benefits under Title II of the Act which are issued on or after April 1, 1985.

See P.L. 98-21, "Social Security Amendments of 1983", §152(c), with respect to crediting amounts of unnegotiated checks to trust funds.

[2] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(d), with respect to deemed entitlement for hospital insurance benefits purposes.

See P.L. 97-455, [Temporary Payment of Disability Benefits], §7(b), with respect to a study of the offset against spouses' benefits and a report to Congress.

See P.L. 98-21, "Social Security Amendments of 1983", §131(d)(2), with respect to individuals not entitled to benefits for December 1983.

[3] See P.L. 98-21, "Social Security Amendments of 1983", §343, with respect to an earnings sharing report to Congress.

[4] P.L. 98-21, §201(c)(1)(A), struck out "age of 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[5] P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[6] P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with[1] the month preceding the month in which he dies. Except as provided in subsection (q) and subsection (w), such individual's old-age insurance benefit for any month shall be equal to his primary insurance amount (as defined in section 215(a)) for such month.

Wife's Insurance Benefits[2]

(b)(1) The wife (as defined in section 216(b)) and every divorced wife (as defined in section 216(d)) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

(A) has filed application for wife's insurance benefits,

(B) has attained age 62 or (in the case of a wife) has in her care (individually or jointly with such individual) at the time of filing such application a child entitled to a child's insurance benefit on the basis of the wages and self-employment income of such individual,

(C) in the case of a divorced wife, is not married, and

(D) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual,

shall (subject to subsection (s)) be entitled to a wife's insurance benefit for each month, beginning with—

(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained retirement age (as defined in section 216(l))[3], the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

(ii) in the case of a wife or divorced wife (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained retirement age (as defined in section 216(l))[4], or

(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

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[1]P.L. 97-35, §2203(a), struck out "beginning with the first month after August 1950 in which such individual becomes so entitled to such insurance benefits and ending with" and substituted "beginning with—

"(A) in the case of an individual who has attained age 65, the first month in which such individual meets the criteria specified in paragraphs (1), (2), and (3), or

"(B) in the case of an individual who has attained age 62, but has not attained age 65, the first month throughout which such individual meets the criteria specified in paragraphs (1) and (2) (if in that month he meets the criterion specified in paragraph (3)),

and ending with",

effective only with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

[2]See P.L. 95-216, "Social Security Amendments of 1977", §334(g), where government service is involved.

See P.L. 98-21, "Social Security Amendments of 1983", §343, with respect to an earnings sharing report to Congress.

[3]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[4]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—[1]

(E) she dies,

(F) such individual dies,

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

(H) in the case of a divorced wife, she marries a person other than such individual,

(I) in the case of a wife who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,

(J) she becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K) such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2) Except as provided in subsection (q) and paragraph (4) of this subsection, such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

(3) In the case of any divorced wife who marries—

(A) an individual entitled to benefits under subsection (c), (f),[2] (g),[3] or (h), of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d),

such divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), not be terminated by reason of such marriage.[4]

(4)(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and

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[1] P.L. 97-35, §2203(b)(1), struck out "beginning with the first month in which she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs—" and substituted

"beginning with—

"(i) in the case of a wife or divorced wife (as so defined) of an individual entitled to old-age benefits, if such wife or divorced wife has attained age 65, the first month in which she meets the criteria specified in subparagraphs (A), (B), (C), and (D), or

"(ii) in the case of a wife or divorced wife (as so defined) of—

"(I) an individual entitled to old-age insurance benefits, if such wife or divorced wife has not attained age 65, or

"(II) an individual entitled to disability insurance benefits,

the first month throughout which she is such a wife or divorced wife and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month she meets the criterion specified in subparagraph (A)),

whichever is earlier, and ending with the month preceding the month in which any of the following occurs—",

effective only with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

[2] P.L. 98-21, §301(a)(7), struck out "(f)" and substituted "(c), (f),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §309(a), inserted "(g),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] P.L. 98-21, §307(a), struck out "; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death." and substituted a period, effective with respect to benefits under Title II of the Act for months after April 1983, but only in cases in which "last month" referred to in the provision amended is a month after April 1983.

(k) shall be reduced (but not below zero) by an amount equal to two-thirds of[1] the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title[2]. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.[3]

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[4]

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced wife of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 214), if such divorced wife—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a wife's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for wife's insurance benefits under this subsection, as if such insured individual had become entitled to old-age insurance benefits on the date on which the divorced wife first meets the criteria for entitlement set forth in clauses (i) and (ii).

(B) A wife's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (J) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.[5]

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[1]P.L. 98-21, §337(a)(1), inserted "two-thirds of", effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[2]P.L. 97-455, §7(c), inserted "for purposes of this title", effective with respect to monthly benefits for months after November 1982.

[3]P.L. 98-21, §337(a)(2), added the preceding sentence, effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[4]P.L. 95-216, §334(a)(2), added paragraph (4).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[5]P.L. 98-21, §132(a), added paragraph (5), effective with respect to monthly benefits for months after December 1984, but only on the basis of applications filed on or after January 1, 1985.

Husband's Insurance Benefits[1]

(c)(1) The husband (as defined in section 216(f)) and every divorced husband (as defined in section 216(d))[2] of an individual entitled to old-age or disability insurance benefits, if such husband or such divorced husband[3]—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62 or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual[4],

(C) in the case of a divorced husband, is not married, and[5]

(D)[6] is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of such individual[7],

shall (subject to subsection (s))[8] be entitled to a husband's insurance benefit for each month, beginning with—

(i) in the case of a husband or divorced husband (as so defined) of an individual who is entitled to an old-age insurance benefit, if such husband or divorced husband has attained age 65[9], the first month in which he meets the criteria specified in subparagraphs (A), (B), (C), and (D), or[10]

(ii) in the case of a husband or divorced husband (as so defined) of—

(I) an individual entitled to old-age insurance benefits, if such husband or divorced husband has not attained age 65[11], or

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[1]See P.L. 95-216, "Social Security Amendments of 1977", §334(g), where government service is involved.

See P.L. 98-21, "Social Security Amendments of 1983", §343, with respect to an earnings sharing report to Congress.

[2]P.L. 98-21, §301(a)(1), inserted "and every divorced husband (as defined in section 216(d))", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §301(a)(1), inserted "or such divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L.98-21, §306(e), inserted "or (in the case of a husband) has in his care (individually or jointly with such individual) at the time of filing such application a child entitled to child's insurance benefits on the basis of the wages and self-employment income of such individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 95-216, §334(b)(1), struck out the former subparagraph (C).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

P.L. 98-21, §301(a)(2)(B), inserted this new subparagraph (C), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 95-216, §334(b)(1), redesignated subparagraph (D) as subparagraph (C).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for those revisions. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

P.L. 98-21, §301(a)(2)(B), redesignated this subparagraph (C) as subparagraph (D) effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §301(a)(8), struck out "his wife" and substituted "such individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §306(d), inserted "(subject to subsection (s))", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]As in original.

[10]P.L. 98-21, §301(a)(2)(C), amended clause (i) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]As in original.

(II) an individual entitled to disability insurance benefits,

the first month throughout which he is such a husband or divorced husband and meets the criteria specified in subparagraphs (B), (C), and (D) (if in such month he meets the criterion specified in subparagraph (A)),[1]

whichever is earlier, and ending with the month preceding the month to[2] which any of the following occurs:

(E) he dies,

(F) such individual dies,

(G) in the case of a husband, they are divorced and either (i) he has not attained age 62, or (ii) he has attained age 62 but has not been married to such individual for a period of 10 years immediately before the divorce became effective,

(H) in the case of a divorced husband, he marries a person other than such individual,

(I) in the case of a husband who has not attained age 62, no child of such individual is entitled to a child's insurance benefit,[3]

(J)[4] he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of such individual, or

(K)[5] such individual is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.[6]

(2)(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) shall be reduced (but not below zero) by an amount equal to two-thirds of[7] the amount of any monthly periodic benefit payable to such husband (or divorced husband)[8] for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 210 for

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[1]P.L. 98-21, §301(a)(2)(C), amended clause (ii) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]As in original. Possibly should be "in".

[3]P.L. 98-21, §306(f), inserted this new subparagraph (I), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §306(f), redesignated subparagraph (I) [added by P.L. 98-21, §301(a)(2)(C)] as subparagraph (J), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §306(f), redesignated subparagraph (J) [added by P.L. 98-21, §301(a)(2)(C)] as subparagraph (K), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 97-35, §2203(c)(1), struck from paragraph (1) "the first month after August 1950 in which he becomes so entitled to such insurance benefits and" and substituted "—", inserted clause (i) and clause (ii), and continued paragraph (1) with "whichever is earlier, and", effective only with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

P.L. 98-21, §301(a)(2)(C), struck out "whichever is earlier, and ending with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits." and substituted all of paragraph (1) following subparagraph (D), with the exception of the present subparagraph (I), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §337(a)(1), inserted "two-thirds of", effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[8]P.L. 98-21, §301(a)(6), inserted "(or divorced husband)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

purposes of this title[1]. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.[2]

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[3]

(3) Except as provided in subsection (q) and paragraph (2) of this subsection[4], such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife (or, in the case of a divorced husband, his former wife)[5] for such month.

(4) In the case of any divorced husband who marries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of 18 and is entitled to benefits under subsection (d), by reason of paragraph (1)(B)(ii) thereof,

such divorced husband's entitlement to benefits under this subsection, notwithstanding the provisions of paragraph (1) (but subject to subsection (s)), shall not be terminated by reason of such marriage.[6]

(5)(A) Notwithstanding the preceding provisions of this subsection, except as provided in subparagraph (B), the divorced husband of an individual who is not entitled to old-age or disability insurance benefits, but who has attained age 62 and is a fully insured individual (as defined in section 214), if such divorced husband—

(i) meets the requirements of subparagraphs (A) through (D) of paragraph (1), and

(ii) has been divorced from such insured individual for not less than 2 years,

shall be entitled to a husband's insurance benefit under this subsection for each month, in such amount, and beginning and ending with such months, as determined (under regulations of the Secretary) in the manner otherwise provided for husband's insurance benefits under this subsection, as if such insured individual had become

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[1]P.L. 97-455, §7(c), inserted "for purposes of this title", effective with respect to monthly benefits for months after November 1982.

[2]P.L. 98-21, §337(a)(2), added the preceding sentence, effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[3]P.L. 95-216, §334(b)(2), amended paragraph (2) in its entirety.

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[4]P.L. 95-216, §334(b)(3), inserted "and paragraph (2) of this subsection".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[5]P.L. 98-21, §301(a)(3), inserted "(or, in the case of a divorced husband, his former wife)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §301(a)(4), added paragraph (4), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

entitled to old-age insurance benefits on the date on which the divorced husband first meets the criteria for entitlement set forth in classes[1] (i) and (ii).

(B) A husband's insurance benefit provided under this paragraph which has not otherwise terminated in accordance with subparagraph (E), (F), (H), or (I) of paragraph (1) shall terminate with the month preceding the first month in which the insured individual is no longer a fully insured individual.[2]

Child's Insurance Benefits

(d)(1) Every child (as defined in section 216(e)) of an individual entitled to old-age or disability insurance benefits, or of an individual who dies a fully or currently insured individual, if such child—

(A) has filed application for child's insurance benefits,

(B) at the time such application was filed was unmarried and (i) either had not attained the age of 18 or was a full-time elementary or secondary school[3] student and had not attained the age of 19[4], or (ii) is under a disability (as defined in section 223(d)) which began before he attained the age of 22, and

(C) was dependent upon such individual—

(i) if such individual is living, at the time such application was filed,

(ii) if such individual has died, at the time of such death, or

(iii) if such individual had a period of disability which continued until he became entitled to old-age or disability insurance benefits, or (if he has died) until the month of his death, at the beginning of such period of disability or at the time he became entitled to such benefits,

shall be entitled to a child's insurance benefit for each month, beginning with—

(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

(ii) in the case of a child (as so defined) of an individual entitled to an old-age insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in paragraphs[5] (B) and (C) (if in such month he meets the criterion specified in paragraph[6] (A)),

whichever is earlier, and ending with the month preceding whichever of the following first occurs—[7]

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[1]As in original. Should be "clauses".

[2]P.L. 98-21, §301(a)(5), added paragraph (5), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[4]P.L. 97-35, §2210(a)(5)(A), struck out '22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[5]As in original. Should be "subparagraphs".

[6]As in original. Should be "subparagraph".

[7]P.L. 97-35, §2203(d)(1), struck out "with the first month after August 1950 in which such child becomes so entitled to such insurance benefits and ending with the month preceding whichever of the following first occurs—" and substituted

"with—

"(i) in the case of a child (as so defined) of such an individual who has died, the first month in which such child meets the criteria specified in subparagraphs (A), (B), and (C), or

"(ii) in the case of a child (as so defined) of an individual entitled to an old-age

(D) the month in which such child dies, or marries,

(E) the month in which such child attains the age of 18, but only if he (i) is not under a disability (as so defined) at the time he attains such age, and (ii) is not a full-time elementary or secondary school[1] student during any part of such month,

(F) if such child was not under a disability (as so defined) at the time he attained the age of 18, the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school[2] student, or

(ii) the month in which he attains the age of 19[3],

but only if he was not under a disability (as so defined) in such earlier month; or

(G) if such child was under a disability (as so defined) at the time he attained the age of 18, or if he was not under a disability (as so defined) at such time but was under a disability (as so defined) at or prior to the time he attained (or would attain) the age of 22, ,[4] or, subject to section 223(e), the termination month (and for purposes of this subparagraph, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity,[5] or (if later) the earlier of—

(III) the first month during no part of which he is a full-time elementary or secondary school[6] student, or

(IV) the month in which he attains the age of 19[7],

but only if he was not under a disability (as so defined) in such earlier month.

Entitlement of any child to benefits under this subsection on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits shall also end with the

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insurance benefit or to a disability insurance benefit, the first month throughout which such child is a child (as so defined) and meets the criteria specified in paragraphs (B) and (C) (if in such month he meets the criterion specified in paragraph (A)), whichever is earlier, and ending with the month preceding whichever of the following first occurs—",

effective with respect to monthly benefits for months after August 1981, and only in the case of individuals who were not entitled to such benefits for August 1981 or any preceding month.

[1] P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[2] P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[3] P.L. 97-35, §2210(a)(5)(A), struck out "22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[4] As in original. Second comma should be stricken.

[5] As in original. Comma should be a closing parenthesis.

[6] P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[7] P.L. 97-35, §2210(a)(5)(A), struck out "22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

month before the first month for which such individual is not entitled to such benefits unless such individual is, for such later month, entitled to old-age insurance benefits or unless he dies in such month. No payment under this paragraph may be made to a child who would not meet the definition of disability in section 223(d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity.

(2) Such child's insurance benefit for each month shall, if the individual on the basis of whose wages and self-employment income the child is entitled to such benefit has not died prior to the end of such month, be equal to one-half of the primary insurance amount of such individual for such month. Such child's insurance benefit for each month shall, if such individual has died in or prior to such month, be equal to three-fourths of the primary insurance amount of such individual.

(3) A child shall be deemed dependent upon his father or adopting father or his mother or adopting mother at the time specified in paragraph (1)(C) unless, at such time, such individual was not living with or contributing to the support of such child and—

(A) such child is neither the legitimate nor adopted child of such individual, or

(B) such child has been adopted by some other individual.

For purposes of this paragraph, a child deemed to be a child of a fully or currently insured individual pursuant to section 216(h)(2)(B) or section 216(h)(3) shall be deemed to be the legitimate child of such individual.

(4) A child shall be deemed dependent upon his stepfather or stepmother at the time specified in paragraph (1)(C) if, at such time, the child was living with or was receiving at least one-half of his support from such stepfather or stepmother.

(5) In the case of a child who has attained the age of eighteen and who marries—

(A) an individual entitled to benefits under subsection (a), (b), (c),[1] (e), (f), (g), or (h) of this section or under section 223(a), or

(B) another individual who has attained the age of eighteen and is entitled to benefits under this subsection,

such child's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage[2].

(6) A child whose entitlement to child's insurance benefits on the basis of the wages and self-employment income of an insured individual terminated with the month preceding the month in which such child attained the age of 18, or with a subsequent month, may again become entitled to such benefits (provided no event specified in paragraph (1)(D) has occurred) beginning with the first month thereafter in which he—

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[1] P.L. 98-21, §301(a)(9), inserted "(c),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2] P.L. 98-21, §307(a), struck out "; except that, in the case of such a marriage to a male individual entitled to benefits under section 223(a) or this subsection, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or this subsection unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(A)(i) is a full-time elementary or secondary school student and has not attained the age of 19, or (ii) is under a disability (as defined in section 223(d)) and has not attained the age of 22, or[1]

(B) is under a disability (as so defined) which began before the close of the 84th month following the month in which his most recent entitlement to child's insurance benefits terminated because he ceased to be under such disability,

but only if he has filed application for such reentitlement. Such reentitlement shall end with the month preceding whichever of the following first occurs:

(C) the first month in which an event specified in paragraph (1)(D) occurs;

(D) the earlier of (i) the first month during no part of which he is a full-time elementary or secondary school[2] student or (ii) the month in which he attains the age of 19[3], but only if he is not under a disability (as so defined) in such earlier month; or

(E) if he was under a disability (as so defined), the third month following the month in which he ceases to be under such disability or (if later) the earlier of—

(i) the first month during no part of which he is a full-time elementary or secondary school[4] student, or

(ii) the month in which he attains the age of 19[5].

(7) For the purposes of this subsection—

(A) A "full-time elementary or secondary school[6] student" is an individual who is in full-time attendance as a student at an elementary or secondary school[7], as determined by the Secretary (in accordance with regulations prescribed by him) in the light of the standards and practices of the schools[8] involved, except that no individual shall be considered a "full-time elementary or secondary school[9] student" if he is paid by his employer while attending an elementary or secondary school[10] at the request, or pursuant to a requirement, of his employer. An individual shall not be considered a "full-time elementary or secondary school[11] student" for the purpose of this section while that individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense (committed after the date of the enactment of this paragraph[12]) which

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[1]P.L. 97-35, §2210(a)(5)(B), amended subparagraph (A) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[2]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[3]P.L. 97-35, §2210(a)(5)(A), struck out "22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[4]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[5]P.L. 97-35, §2210(a)(5)(A), struck out "22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[6]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[7]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[8]P.L. 97-35, §2210(a)(2)(B), struck out "institutions" and substituted "schools". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[9]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[10]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[11]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[12]This sentence was added by P.L. 96-473, §5(b), enacted October 19, 1980. This paragraph was

constituted a felony under applicable law.[1] An individual who is determined to be a full-time elementary or secondary school student shall be deemed to be such a student throughout the month with respect to which such determination is made.[2]

(B) Except to the extent provided in such regulations, an individual shall be deemed to be a full-time elementary or secondary school[3] student during any period of nonattendance at an elementary or secondary school[4] at which he has been in full-time attendance if (i) such period is 4 calendar months or less, and (ii) he shows to the satisfaction of the Secretary that he intends to continue to be in full-time attendance at an elementary or secondary school[5] immediately following such period. An individual who does not meet the requirement of clause (ii) with respect to such period of nonattendance shall be deemed to have met such requirement (as of the beginning of such period) if he is in full-time attendance at an elementary or secondary school[6] immediately following such period.

(C)(i) An "elementary or secondary school" is a school which provides elementary or secondary education, respectively, as determined under the law of the State or other jurisdiction in which it is located.

(ii) For the purpose of determining whether a child is a "full-time elementary or secondary school student" or "intends to continue to be in full-time attendance at an elementary or secondary school", within the meaning of this subsection, there shall be disregarded any education provided, or to be provided, beyond grade 12.[7]

(D) A child who attains age 19[8] at a time when he is a full-time elementary or secondary school[9] student (as defined in subparagraph (A) of this paragraph and without application of subparagraph (B) of such paragraph) but has not (at such time) completed the requirements for, or received, a diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i))[10] shall be deemed (for purposes of determining whether his

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added by P.L. 89-97, §306(b)(3), enacted July 30, 1965.

[1]P.L. 96-473, §5(b), added the preceding sentence, effective with respect to benefits payable for months beginning on or after October 1, 1980.

[2]P.L. 97-35, §2203(d)(2), added the preceding sentence, effective with respect to monthly insurance benefits for months after August 1981, and only in the case of individuals who were not entitled to benefits for August 1981 or any preceding month.

[3]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[4]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[5]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[6]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[7]P.L. 97-35, §2210(a)(3), amended subparagraph (C) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[8]P.L. 97-35, §2210(a)(5)(A), struck out "22" and substituted "19". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[9]P.L. 97-35, §2210(a)(1), inserted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[10]P.L. 97-35, §2210(a)(4), struck out "degree from a four-year college or university" and substituted "diploma or equivalent certificate from a secondary school (as defined in subparagraph (C)(i))". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

entitlement to benefits under this subsection has terminated under paragraph (1)(F) and for purposes of determining his initial entitlement to such benefits under clause (i) of paragraph (1)(B)) not to have attained such age until the first day of the first month following the end of the quarter or semester in which he is enrolled at such time (or, if the elementary or secondary school[1] (as defined in this paragraph) in which he is enrolled is not operated on a quarter or semester system, until the first day of the first month following the completion of the course in which he is so enrolled or until the first day of the third month beginning after such time, whichever first occurs).

(8) In the case of—

(A) an individual entitled to old-age insurance benefits (other than an individual referred to in subparagraph (B)), or

(B) an individual entitled to disability insurance benefits, or an individual entitled to old-age insurance benefits who was entitled to disability insurance benefits for the month preceding the first month for which he was entitled to old-age insurance benefits,

a child of such individual adopted after such individual became entitled to such old-age or disability insurance benefits shall be deemed not to meet the requirements of clause (i) or (iii) of paragraph (1)(C) unless such child—

(C) is the natural child or stepchild of such individual (including such a child who was legally adopted by such individual), or

(D)(i) was legally adopted by such individual in an adoption decreed by a court of competent jurisdiction within the United States,

(ii) was living with such individual in the United States and receiving at least one-half of his support from such individual (I) if he is an individual referred to in subparagraph (A), for the year immediately before the month in which such individual became entitled to old-age insurance benefits or, if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, the month in which such period of disability began, or (II) if he is an individual referred to in subparagraph (B), for the year immediately before the month in which began the period of disability of such individual which still exists at the time of adoption (or, if such child was adopted by such individual after such individual attained retirement age (as defined in section 216(l))[2], the period of disability of such individual which existed in the month preceding the month in which he attained retirement age (as defined in section 216(l))[3]), or the month in which such individual became entitled to disability insurance benefits, or (III) if he is an individual referred to in either subparagraph (A) or subparagraph (B) and the child is the grandchild of such individual or his or her spouse, for the year immediately before the month in which such child files his or her application for child's insurance benefits, and

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[1]P.L. 97-35, §2210(a)(2)(A), struck out "educational institution" and substituted "elementary or secondary school". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2210(b) and (c), p. 785.

[2]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

(iii) had not attained the age of 18 before he began living with such individual.

In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of birth of such child.

(9)(A) A child who is a child of an individual under clause (3) of the first sentence of section 216(e) and is not a child of such individual under clause (1) or (2) of such first sentence shall be deemed not to be dependent on such individual at the time specified in subparagraph (1)(C) of this subsection unless (i) such child was living with such individual in the United States and receiving at least one-half of his support from such individual (I) for the year immediately before the month in which such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (II) if such individual had a period of disability which continued until he had become entitled to old-age insurance benefits, or disability insurance benefits, or died, for the year immediately before the month in which such period of disability began, and (ii) the period during which such child was living with such individual began before the child attained age 18.

(B) In the case of a child who was born in the one-year period during which such child must have been living with and receiving at least one-half of his support from such individual, such child shall be deemed to meet such requirements for such period if, as of the close of such period, such child has lived with such individual in the United States and received at least one-half of his support from such individual for substantially all of the period which begins on the date of such child's birth.

Widow's Insurance Benefits[1]

(e)(1) The widow (as defined in section 216(c)) and every surviving divorced wife (as defined in section 216(d)) of an individual who died a fully insured individual, if such widow or such surviving divorced wife—

(A) is not married,

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (4)[2],

(C)(i) has filed application for widow's insurance benefits, or was entitled to wife's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which he died, and (I) has attained retirement age (as defined in section 216(l))[3] or (II) is not

[1]See P.L. 95-216, "Social Security Amendments of 1977", §334(g), where government service is involved.

See P.L. 95-216, §336(c)(2) and (d), with respect to the applicable savings clause.

[2]P.L. 98-21, §131(a)(3)(B), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[3]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

entitled to benefits under subsection (a) or section 223, or[1]

(ii) was entitled, on the basis of such wages and self-employment income, to mother's insurance benefits for the month preceding the month in which she attained retirement age (as defined in section 216(l))[2], and

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2))[3] of such deceased individual,

shall be entitled to a widow's insurance benefit for each month, beginning with—

(E) if she satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which she becomes so entitled to such insurance benefits, or

(F) if she satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after her waiting period (as defined in paragraph (5)[4]) in which she becomes so entitled to such insurance benefits, or

(ii) the first month during all of which she is under a disability and in which she becomes so entitled to such insurance benefits, but only if she was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (4)[5] and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: she remarries, dies, becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (2))[6] of such deceased individual, or, if she became entitled to such benefits before she attained age 60, ,[7] subject to section 223(e), the termination month (unless she attains retirement age (as defined in section 216(l))[8] on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which her disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination

[1]See P.L. 88-525, "Food Stamp Act of 1977", §11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices.

[2]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3]P.L. 98-21, §133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[4]P.L. 98-21, §131(a)(3)(C), struck out "(6)" and substituted "(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[5]P.L. 98-21, §131(a)(3)(C), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6]P.L. 98-21, §133(a)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (2))", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[7]As in original.

[8]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) Except as provided in subsection (q), paragraph (8)[1] of this subsection, and subparagraph (D) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 215(a)(1) (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 215(a)(1)(B) (i) and (ii) which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 215(b)(3)(A)(ii)(I), and

(III) such primary insurance amount shall be increased under section 215(i) as if it were the primary insurance amount referred to in section 215(i)(2)(A)(ii)(II), except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had he lived to that age, or

(II) the second year preceding the year in which the widow or surviving divorced wife first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 215.

(C) If such deceased individual.[2] was (or upon application would

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[1] As in original; "(7)" may be intended.

[2] P.L. 98-21, §133(a)(1)(B), struck out "(2)(A) Except as provided in subsection (q), paragraph (7) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual" and substituted the above text beginning with "(2)(A)" and continuing through "(C) If such deceased individual.", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

P.L. 98-21, §131(a)(3)(D), with respect to the preceding text of this footnote, struck out "(8)" and substituted "(7)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

P.L. 95-216, §334(c)(1), with respect to the same sentence, struck out "paragraph (4)" and substituted "paragraphs (4) and (8)".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982,

have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5), 215(f)(6), or 215(f)(9)(B)[1] and under section 215(i) as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)[2] the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of such subsection (w).

(D)[3] If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q)) for such month if such individual were still living and section 215(f)(5), 215(f)(6), or 215(f)(9)(B)[4] were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C))[5] of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3)[6] For purposes of paragraph (1), if—

(A) a widow or surviving divorced wife marries after attaining age 60 (or after attaining age 50 if she was entitled before such marriage occurred to benefits based on disability under this subsection), or

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amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

As in original. Period should be stricken.

[1] P.L. 98-21, §113(d), struck out "215(f) (5) or (6)" and substituted "215(f)(5), 215(f)(6), or 215(f)(9)(B)", effective April 20, 1983.

[2] As in original. There should be a closing parenthesis after "subsection (w)".

[3] P.L. 98-21, §133(a)(1)(A), redesignated subparagraph (B) as subparagraph (D), effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[4] P.L. 98-21, §113(d), struck out "215(f) (5) or (6)" and substituted "215(f)(5), 215(f)(6), or 215(f)(9)(B)", effective April 20, 1983.

[5] P.L. 98-21, §133(a)(2)(B), inserted "(as determined without regard to subparagraph (C))", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[6] P.L. 98-21, §131(a)(1), repealed the former paragraph (3), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

P.L. 98-21, §131(a)(3)(A), redesignated the former paragraph (4) as paragraph (3), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

(B) a disabled widow or disabled surviving divorced wife described in paragraph (1)(B)(ii) marries after attaining age 50, such marriage shall be deemed not to have occurred.[1]

(4)[2] The period referred to in paragraph (1)(B)(ii), in the case of any widow or surviving divorced wife, is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income her benefits are or would be based, or

(B) the last month for which she was entitled to mother's insurance benefits on the basis of the wages and self-employment income of such individual, or

(C) the month in which a previous entitlement to widow's insurance benefits on the basis of such wages and self-employment income terminated because her disability had ceased,

and ending with the month before the month in which she attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(5)[3] The waiting period referred to in paragraph (1)(F), in the case of any widow or surviving divorced wife, is the earliest period of five consecutive calendar months—

(A) throughout which she has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which her application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (4)[4] begins.

(6)[5] In the case of an individual entitled to monthly insurance benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972[6], such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 215(i)(3)) or any increase in benefits made under or pursuant to section 215(i), including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

(7)[7](A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k), paragraph (2)(B), and paragraph (3)[8]) shall be reduced (but not below zero) by an amount equal to two-thirds of[9] the amount of

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[1]P.L. 98-21, §131(a)(2), amended this paragraph in its entirety, effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[2]P.L. 98-21, §131(a)(3)(A), redesignated paragraph (5) as paragraph (4), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[3]P.L. 98-21, §131(a)(3)(A), redesignated paragraph (6) as paragraph (5), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[4]P.L. 98-21, §131(a)(3)(E), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[5]P.L. 98-21, §131(a)(3)(A), redesignated paragraph (7) as paragraph (6), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6]P.L. 92-603.

[7]P.L. 98-21, §131(a)(3)(A), redesignated paragraph (8) as paragraph (7), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[8]P.L. 98-21, §131(a)(3)(F), struck out "(4)" and substituted "(3)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[9]P.L. 98-21, §337(a)(1), inserted "two-thirds of", effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months

any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 218(b)(2)) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title[1]. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.[2]

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[3]

Widower's Insurance Benefits[4]

(f)(1) The widower (as defined in section 216(g)) and every surviving divorced husband (as defined in section 216(d))[5] of an individual who died a fully insured individual, if such widower or such surviving divorced husband[6]—

(A) is not married[7],

(B)(i) has attained age 60, or (ii) has attained age 50 but has not attained age 60 and is under a disability (as defined in section 223(d)) which began before the end of the period specified in paragraph (5)[8],

(C)(i)[9] has filed application for widower's insurance benefits or was entitled to husband's insurance benefits, on the basis of the wages and self-employment income of such individual, for the month preceding the month in which she died, and (I) has

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after June 1983.

[1]P.L. 97-455, §7(c), inserted "for purposes of this title", effective with respect to monthly benefits for months after November 1982.

[2]P.L. 98-21, §337(a)(2), inserted the preceding sentence, effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[3]P.L. 95-216, §334(c)(2), added this paragraph as paragraph (8).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that addition. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[4]See P.L. 88-525, "Food Stamp Act of 1977", §11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices.

See P.L. 95-216, "Social Security Amendments of 1977", §334(g), where government service is involved.

See P.L. 95-216, §336(c)(2) and (d), with respect to the applicable savings clause.

[5]P.L. 98-21, §301(b)(1), inserted "and every surviving divorced husband (as defined in section 216(d))", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §301(b)(1), inserted "or such surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §302, struck out "has not remarried" and substituted "is not married", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §131(b)(3)(B), struck out "(6)" and substituted "(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[9]P.L. 98-21, §306(g), inserted "(i)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

attained retirement age (as defined in section 216(l))[1] or (II) is not entitled to benefits under subsection (a) or section 223, or

(ii) was entitled, on the basis of such wages and self-employment income, to father's insurance benefits for the month preceding the month in which he attained age 65[2], and[3]

(D)[4] is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3))[5] of such deceased individual[6],

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E)[7] if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F)[8] if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (6)[9]) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (5)[10] and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount (as determined after application of subparagraphs (B) and (C) of paragraph (3))[11] of such deceased individual[12], or, if he

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[1]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[2]As in original.

[3]P.L. 98-21, §306(g), added clause (ii), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 95-216, §334(d)(1), struck out the former subparagraph (D) and redesignated subparagraph (E) as subparagraph (D).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[5]P.L. 98-21, §133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C) of paragraph (3))", effective with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[6]P.L.98-21, §301(b)(2), struck out "his deceased wife" and substituted "such deceased individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 95-216, §334(d)(1), redesignated subparagraph (F) as subparagraph (E).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[8]P.L. 95-216, §334(d)(1), redesignated subparagraph (G) as subparagraph (F).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[9]P.L. 98-21, §131(b)(3)(C), struck out "(7)" and substituted "(6)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[10]P.L. 98-21, §131(b)(3)(C), struck out "(6)" and substituted "(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[11]P.L. 98-21, §133(b)(2)(A), inserted "(as determined after application of subparagraphs (B) and (C)

became entitled to such benefits before he attained age 60, ,[1] subject to section 223(e), the termination month (unless he attains retirement age (as defined in section 216(l))[2] on or before the last day of such termination month). For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity.

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q), paragraph (3)(B), and paragraph (4)[3]) shall be reduced (but not below zero) by an amount equal to two-thirds of[4] the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 218(b)(2)) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title[5]. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.[6]

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable

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of paragraph (3))", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[1][2]P.L. 98-21, §301(b)(2), struck out "his deceased wife" and substituted "such deceased individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[1]As in original. One comma should be stricken.

[2]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3]P.L. 98-21, §131(b)(3)(D), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[4]P.L. 98-21, §337(a)(1), inserted "two-thirds of", effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[5]P.L. 97-455, §7(c), inserted "for purposes of this title", effective with respect to monthly benefits for months after November 1982.

[6]P.L. 98-21, §337(a)(2), added the preceding sentence, effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

in a lump sum if it is a commutation of, or a substitute for, periodic payments.[1]

(3)(A) Except as provided in subsection (q), paragraph (2) of this subsection, and subparagraph (D) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined for purposes of this subsection after application of subparagraphs (B) and (C)) of such deceased individual.

(B)(i) For purposes of this subsection, in any case in which such deceased individual dies before attaining age 62 and section 215(a)(1) (as in effect after December 1978) is applicable in determining such individual's primary insurance amount—

(I) such primary insurance amount shall be determined under the formula set forth in section 215(a)(1)(B) (i) and (ii) which is applicable to individuals who initially become eligible for old-age insurance benefits in the second year after the year specified in clause (ii),

(II) the year specified in clause (ii) shall be substituted for the second calendar year specified in section 215(b)(3)(A)(ii)(I), and

(III) such primary insurance amount shall be increased under section 215(i) as if it were the primary insurance amount referred to in section 215(i)(2)(A)(ii)(II), except that it shall be increased only for years beginning after the first year after the year specified in clause (ii).

(ii) The year specified in this clause is the earlier of—

(I) the year in which the deceased individual attained age 60, or would have attained age 60 had she lived to that age, or

(II) the second year preceding the year in which the widower or surviving divorced husband[2] first meets the requirements of paragraph (1)(B) or the second year preceding the year in which the deceased individual died, whichever is later.

(iii) This subparagraph shall apply with respect to any benefit under this subsection only to the extent its application does not result in a primary insurance amount for purposes of this subsection which is less than the primary insurance amount otherwise determined for such deceased individual under section 215.

(C) If such deceased individual.[3] [4] was (or upon application would

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[1]P.L. 95-216, §334(d)(2), amended paragraph (2) in its entirety.

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[2]P.L. 98-21, §301(b)(3), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §133(b)(1)(B), struck out "(3)(A) Except as provided in subsection (q), paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual" and substituted "(3)(A) Except" and all that follows through "(C) If such deceased individual.", effective with respect to monthly insurance benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

P.L. 95-216, §334(d)(3), with respect to the stricken text, struck out "paragraph (5)" and substituted "paragraphs (2) and (5)".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date applicable to the amendment made by P.L. 95-216, §334(d)(3). For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[4]As in original. Period should be stricken.

have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w), then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 215(f)(5), 215(f)(6), or 215(f)(9)(B)[1] and under section 215(i) as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of such subsection (w)) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of such subsection (w).

(D)[2] If the deceased individual[3] (on the basis of whose wages and self-employment income a widower or surviving divorced husband[4] is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q), the widower's insurance benefit of such widower or surviving divorced husband[5] for any month shall, if the amount of the widower's insurance benefit of such widower or surviving divorced husband[6] (as determined under subparagraph (A) and after application of subsection (q)) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual[7] would have been entitled (after application of subsection (q)) for such month if such individual[8] were still living and section 215(f)(5), 215(f)(6), or 215(f)(9)(B)[9] were applied, where applicable,;[10] and

(ii) 82½ percent of the primary insurance amount (as determined without regard to subparagraph (C))[11] of such deceased individual[12];

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

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[1]P.L. 98-21, §113(d), struck out "215(f) (5) or (6)" and substituted "215(f)(5), 215(f)(6), or 215(f)(9)(B)", effective April 20, 1983.

[2]P.L. 98-21, §133(b)(1)(A), redesignated subparagraph (B) as subparagraph (D), effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[3]P.L. 98-21, §301(b)(5), struck out "wife" and substituted "individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §301(b)(5), struck out "wife" and substituted "individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §301(b)(5), struck out "wife" and substituted "individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §113(d), struck out "215(f) (5) or (6)" and substituted "215(f)(5), 215(f)(6), or 215(f)(9)(B)", effective April 20, 1983.

[10]As in original.

[11]P.L. 98-21, §133(b)(2)(B), inserted "(as determined without regard to subparagraph (C))", effective with respect to monthly benefits for months after December 1984 for individuals who first meet all criteria for entitlement to benefits under §202(e) or (f) of the Act (other than making application for such benefits) after December 1984.

[12]P.L. 98-21, §301(b)(5), struck out "wife" and substituted "individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(4)[1] For purposes of paragraph (1), if—

(A) a widower or surviving divorced husband[2] marries after attaining age 60 (or after attaining age 50 if he was entitled before such marriage occurred to benefits based on disability under this subsection), or

(B) a disabled widower or surviving divorced husband[3] described in paragraph (1)(B)(ii) marries after attaining age 50,

such marriage shall be deemed not to have occurred.[4]

(5)[5] The period referred to in paragraph (1)(B)(ii), in the case of any widower or surviving divorced husband[6], is the period beginning with whichever of the following is the latest:

(A) the month in which occurred the death of the fully insured individual referred to in paragraph (1) on whose wages and self-employment income his benefits are or would be based,

(B) the last month for which he was entitled to father's insurance benefits on the basis of the wages and self-employment income of such individual, or[7]

(C)[8] the month in which a previous entitlement to widower's insurance benefits on the basis of such wages and self-employment income terminated because his disability had ceased,

and ending with the month before the month in which he attains age 60, or, if earlier, with the close of the eighty-fourth month following the month with which such period began.

(6)[9] The waiting period referred to in paragraph (1)(F)[10], in the case of any widower or surviving divorced husband[11], is the earliest period of five consecutive calendar months—

(A) throughout which he has been under a disability, and

(B) which begins not earlier than with whichever of the following is the later: (i) the first day of the seventeenth month before the month in which his application is filed, or (ii) the first day of the fifth month before the month in which the period specified in paragraph (5)[12] begins.

(7)[13] In the case of an individual entitled to monthly insurance

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[1]P.L. 98-21, §131(b)(1), repealed paragraph (4), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

P.L. 98-21, §131(b)(3)(A), redesignated this paragraph (5) as paragraph (4), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[2]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §131(b)(2), amended this paragraph in its entirety, effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[5]P.L. 98-21, §131(b)(3)(A), redesignated the former paragraph (6) as paragraph (5), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §306(h), inserted this new subparagraph (B), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §306(h), redesignated the former subparagraph (B) as subparagraph (C), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §131(b)(3)(A), redesignated the former paragraph (7) as paragraph (6), effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[10]P.L. 95-216, §334(d)(4)(A), struck out "(G)" and substituted "(F)".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[11]P.L. 98-21, §301(b)(4), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §131(b)(3)(E), struck out "(6)" and substituted "(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[13]P.L. 98-21, §131(b)(3)(A), redesignated the former paragraph (8) as paragraph (7), effective with

benefits payable under this section for any month prior to January 1973 whose benefits were not redetermined under section 102(g) of the Social Security Amendments of 1972[1], such benefits shall not be redetermined pursuant to such section, but shall be increased pursuant to any general benefit increase (as defined in section 215(i)(3)) or any increase in benefits made under or pursuant to section 215(i), including for this purpose the increase provided effective for March 1974, as though such redetermination had been made.

Mother's and Father's[2] Insurance Benefits[3]

(g)(1) The surviving spouse[4] and every surviving divorced parent[5] (as defined in section 216(d)) of an individual who died a fully or currently insured individual, if such surviving spouse[6] or surviving divorced parent[7]—

(A) is not married,

(B) is not entitled to a surviving spouse's[8] insurance benefit,

(C) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than three-fourths of the primary insurance amount of such individual,

(D) has filed application for mother's or father's[9] insurance benefits, or was entitled to a spouse's insurance benefit[10] on the basis of the wages and self-employment income of such individual for the month preceding the month in which such individual[11] died,

(E) at the time of filing such application has in his or[12] her care a child of such individual entitled to a child's insurance benefit, and

(F) in the case of a surviving divorced parent[13]—

(i) the child referred to in subparagraph (E) is his or[14] her son, daughter, or legally adopted child, and

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respect to monthly benefits payable under Title II of the Act for months after December 1983.

[1]P.L. 92-603.

[2]P.L. 98-21, §306(b), inserted "and Father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]See P.L. 88-525, "Food Stamp Act of 1977", §11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices.

See P.L. 95-216, "Social Security Amendments of 1977", §334(g), where government service is involved.

[4]P.L. 98-21, §306(a)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §306(a)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §306(a)(2), struck out "widow's" and substituted "surviving spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §306(a)(7), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §306(a)(3), struck out "wife's insurance benefits" and substituted "a spouse's insurance benefit", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §306(a)(3), struck out "he" and substituted "such individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §306(a)(4), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[13]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[14]P.L. 98-21, §306(a)(4), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(ii) the benefits referred to in such subparagraph are payable on the basis of such individual's wages and self-employment income,

shall (subject to subsection (s)) be entitled to a mother's or father's[1] insurance benefit for each month, beginning with the first month[2] in which he or[3] she becomes so entitled to such insurance benefits and ending with the month preceding the first month in which any of the following occurs: no child of such deceased individual is entitled to a child's insurance benefit, such surviving spouse[4] or surviving divorced parent[5] becomes entitled to an old-age insurance benefit equal to or exceeding three-fourths of the primary insurance amount of such deceased individual, he or[6] she becomes entitled to a surviving spouse's[7] insurance benefit, he or[8] she remarries, or he or[9] she dies. Entitlement to such benefits shall also end, in the case of a surviving divorced parent[10], with the month immediately preceding the first month in which no son, daughter, or legally adopted child of such surviving divorced parent[11] is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased individual.

(2) Except as provided in paragraph (4) of this subsection, such[12] mother's or father's[13] insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a surviving spouse[14] or surviving divorced parent[15] who marries—

(A) an individual entitled to benefits under this subsection or[16] subsection (a), (b),[17] (c),[18] (e),[19] (f), or (h), or under section 223(a), or

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[1]P.L. 98-21, §306(a)(7), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §306(a)(8), struck out "after August 1950", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §306(a)(5), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §306(a)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §306(a)(5), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §306(a)(2), struck out "widow's" and substituted "surviving spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §306(a)(5), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §306(a)(5), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 95-216, §334(e)(1), struck out "Such" and substituted "Except as provided in paragraph (4) of this subsection, such".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[13]P.L. 98-21, §306(a)(7), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[14]P.L. 98-21, §306(a)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[15]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[16]P.L. 98-21, §306(a)(9)(A), inserted "this subsection or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[17]P.L. 98-21, §306(a)(9)(B), inserted "(b),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[18]P.L. 98-21, §301(b)(6), inserted "(c),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

the entitlement of such surviving spouse[1] or surviving divorced parent[2] to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage[3].

(4)(A) The amount of a mother's or father's[4] insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k)) shall be reduced (but not below zero) by an amount equal to two-thirds of[5] the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2)) if, on the last day such individual was employed by such entity, such service did not constitute "employment" as defined in section 210 for purposes of this title[6]. The amount of the reduction in any benefit under this subparagraph, if not a multiple of $0.10, shall be rounded to the next higher multiple of $0.10.[7]

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.[8]

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[1]P.L. 98-21, §306(a)(9)(B), inserted "(e),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §306(a)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §306(a)(6), struck out "mother" and substituted "parent", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §307(a), struck out "; except that, in the case of such a marriage to an individual entitled to benefits under section 223(a) or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 223(a) or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 223(a), he is entitled, for the month following such last month, to benefits under subsection (a) of this section", effective with respect to benefits under Title II of the Act for months after April 1983, but only in cases in which the "last month" referred to in the provision amended is a month after April 1983.

[4]P.L. 98-21, §306(a)(7), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §337(a)(1), inserted "two-thirds of", effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[6]P.L. 97-455, §7(c), inserted "for purposes of this title", effective with respect to monthly benefits for months after November 1982.

[7]P.L. 98-21, §337(a)(2), added the preceding sentence, effective only with respect to monthly benefits payable under Title II of the Act to individuals who initially become eligible (as defined in §334 of P.L. 95-216 [see "Social Security Amendments of 1977", §334(g)(2)]) for monthly periodic benefits (within the meaning of the provisions of this subparagraph of the Social Security Act) for months after June 1983.

[8]P.L. 95-216, §334(e)(2), added paragraph (4).

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that addition. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

Parent's Insurance Benefits[1]

(h)(1) Every parent (as defined in this subsection) of an individual who died a fully insured individual, if such parent—

(A) has attained age 62,

(B)(i) was receiving at least one-half of his support from such individual at the time of such individual's death or, if such individual had a period of disability which did not end prior to the month in which he died, at the time such period began or at the time of such death, and (ii) filed proof of such support within two years after the date of such death, or, if such individual had such a period of disability, within two years after the month in which such individual filed application with respect to such period of disability or two years after the date of such death, as the case may be,

(C) has not married since such individual's death,

(D) is not entitled to old-age insurance benefits, or is entitled to old-age insurance benefits each of which is less than 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case), and

(E) has filed application for parent's insurance benefits,

shall be entitled to a parent's insurance benefit for each month beginning with the first month after August 1950 in which such parent becomes so entitled to such parent's insurance benefits and ending with the month preceding the first month in which any of the following occurs: such parent dies, marries, or becomes entitled to an old-age insurance benefit equal to or exceeding 82½ percent of the primary insurance amount of such deceased individual if the amount of the parent's insurance benefit for such month is determinable under paragraph (2)(A) (or 75 percent of such primary insurance amount in any other case).

(2)(A) Except as provided in subparagraphs (B) and (C), such parent's insurance benefit for each month shall be equal to 82½ percent of the primary insurance amount of such deceased individual.

(B) For any month for which more than one parent is entitled to parent's insurance benefits on the basis of such deceased individual's wages and self-employment income, such benefit for each such parent for such month shall (except as provided in subparagraph (C)) be equal to 75 percent of the primary insurance amount of such deceased individual.

(C) In any case in which—

(i) any parent is entitled to a parent's insurance benefit for a month on the basis of a deceased individual's wages and self-employment income, and

(ii) another parent of such deceased individual is entitled to a parent's insurance benefit for such month on the basis of such wages and self-employment income, and on the basis of an application filed after such month and after the month in which the application for the parent's benefits referred to in clause (i) was filed,

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[1]See P.L. 88-525, "Food Stamp Act of 1977", §11(i) and (j), with respect to accepting applications for food stamps at Social Security Administration offices.

the amount of the parent's insurance benefit of the parent referred to in clause (i) for the month referred to in such clause shall be determined under subparagraph (A) instead of subparagraph (B) and the amount of the parent's insurance benefit of a parent referred to in clause (ii) for such month shall be equal to 150 percent of the primary insurance amount of the deceased individual minus the amount (before the application of section 203(a)) of the benefit for such month of the parent referred to in clause (i).

(3) As used in this subsection, the term "parent" means the mother or father of an individual, a stepparent of an individual by a marriage contracted before such individual attained the age of sixteen, or an adopting parent by whom an individual was adopted before he attained the age of sixteen.

(4) In the case of a parent who marries—

(A) an individual entitled to benefits under this subsection or subsection (b), (c),[1] (e), (f), or (g), or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d),

such parent's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) but subject to subsection (s), not be terminated by reason of such marriage[2].

Lump-Sum Death Payments

(i) Upon the death, after August 1950, of an individual who died a fully or currently insured individual, an amount equal to three times such individual's primary insurance amount (as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981[3], relating to the repeal of the minimum benefit provisions)[4], or an amount equal to $255, whichever is the smaller, shall be paid in a lump sum to the person, if any, determined by the Secretary to be the widow or widower of the deceased and to have been living in the same household with the deceased at the time of death. If there is no such person, or if such person dies before receiving payment, then such amount shall be paid—

(1) to a widow (as defined in section 216(c)) or widower (as defined in section 216(g)) who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (e), (f), or (g) of this section for the month in which occurred such individual's death; or[5]

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[1]P.L. 98-21, §301(b)(7), inserted "(c),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §307(a), struck out "; except that, in the case of such a marriage to a male individual entitled to benefits under subsection (d), the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) unless he ceases to be so entitled by reason of his death", effective with respect to benefits under Title II of the Act for months after April 1983, but only in cases in which the "last month" referred to in the provision amended is a month after April 1983.

[3]P.L. 97-35.

[4]P.L. 97-35, §2201(f), inserted "(as determined without regard to the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981, relating to the repeal of the minimum benefit provisions)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Social Security Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[5]P.L. 97-35, §2202(a)(1)(A), amended paragraph (1) in its entirety, effective only with respect to

(2) if no person qualifies for payment under paragraph (1), or if such person dies before receiving payment, in equal shares to each person who is entitled (or would have been so entitled had a timely application been filed), on the basis of the wages and self-employment income of such insured individual, to benefits under subsection (d) of this section for the month in which occurred such individual's death.[1]

No payment[2] shall be made to any person under this subsection unless application therefor shall have been filed, by or on behalf of such person (whether or not legally competent), prior to the expiration of two years after the date of death of such insured individual, or unless such person was entitled to wife's or husband's insurance benefits, on the basis of the wages and self-employment income of such insured individual, for the month preceding the month in which such individual died. In the case of any individual who died outside the forty-eight States and the District of Columbia after December 1953 and before January 1, 1957, whose death occurred while he was in the active military or naval service of the United States, and who is returned to any of such States, the District of Columbia, Alaska, Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa for interment or reinterment, the provisions of the preceding sentence shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment. In the case of any individual who died outside the fifty States and the District of Columbia after December 1956 while he was performing service, as a member of a uniformed service, to which the provisions of section 210(l)(1) are applicable, and who is returned to any State, or to any Territory or possession of the United States, for interment or reinterment, the provisions of the third sentence of this subsection shall not prevent payment to any person under the second sentence of this subsection if application for a lump-sum death payment with respect to such deceased individual is filed by or on behalf of such person (whether or not legally competent) prior to the expiration of two years after the date of such interment or reinterment.

Application for Monthly Insurance Benefits

(j)(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsection (a), (b), (c), (d), (e), (f), (g), or (h) for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to—

(A) the end of the twelfth month immediately succeeding such month in any case where the individual (i) is filing application

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deaths occurring after August 1981.

[1] P.L. 97-35, §2202(a)(1)(A), amended paragraph (2) in its entirety and struck out paragraphs (3) and (4), effective only with respect to deaths occurring after August 1981.

[2] P.L. 97-35, §2202(a)(1)(B), struck out "(except a payment as authorized pursuant to clause (1)(A) of the preceding sentence)", effective only with respect to deaths occurring after August 1981. Section 2202(a)(1)(B) has been executed as though it reads "... payment authorized ...".

for a benefit under subsection (e) or (f), and satisfies paragraph (1)(B) of such subsection[1] by reason of clause (ii) thereof, or (ii) is filing application for a benefit under subsection (b), (c), or (d) on the basis of the wages and self-employment income of a person entitled to disability insurance benefits, or

(B) the end of the sixth month immediately succeeding such month in any case where subparagraph (A) does not apply.[2]

Any benefit under this title for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

(2) An application for any monthly benefits under this section filed before the first month in which the applicant satisfies the requirements for such benefits shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).

(3) Notwithstanding the provisions of paragraph (1), an individual may, at his option, waive entitlement to any benefit referred to in paragraph (1) for any one or more consecutive months (beginning with the earliest month for which such individual would otherwise be entitled to such benefit) which occur before the month in which such individual files application for such benefit; and, in such case, such individual shall not be considered as entitled to such benefits for any such month or months before such individual filed such application. An individual shall be deemed to have waived such entitlement for any such month for which such benefit would, under the second sentence of paragraph (1), be reduced to zero.

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) for any month prior to the month in which he or she files an application for benefits under that subsection if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q), the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed.

(B)(i) If the individual applying for retroactive benefits is applying for such benefits under subsection (a), and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) not subject to reduction under subsection (q), then subparagraph (A) shall not apply with respect to such month or any subsequent month.

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[1] As in original. Subsection should be identified.

[2] P.L. 96-499, §1011(a), struck out "the end of the twelfth month immediately succeeding such month." and substituted "—" followed by subparagraphs (A) and (B), effective with respect to applications filed on or after March 1, 1981.

(ii) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 223(d)), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(iii) Subparagraph (A) does not apply to a benefit under subsection (e) or (f) for the month immediately preceding the month of application, if the insured individual died in that preceding month.[1]

(iv)[2] If the individual applying for retroactive benefits has excess earnings (as defined in section 203(f)) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(v)[3] As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

Simultaneous Entitlement to Benefits

(k)(1) A child, entitled to child's insurance benefits on the basis of the wages and self-employment income of an insured individual, who would be entitled, on filing application, to child's insurance benefits on the basis of the wages and self-employment income of some other insured individual, shall be deemed entitled, subject to the provisions of paragraph (2) hereof, to child's insurance benefits on the basis of the wages and self-employment income of such other individual if an application for child's insurance benefits on the basis of the wages and self-employment income of such other individual has been filed by any other child who would, on filing application, be entitled to child's insurance benefits on the basis of the wages and self-employment income of both such insured individuals.

(2)(A) Any child who under the preceding provisions of this section is entitled for any month to child's insurance benefits on the wages and self-employment income of more than one insured individual shall, notwithstanding such provisions, be entitled to only one of such child's insurance benefits for such month. Such child's insurance benefits for such month shall be the benefit based on the wages and self-employment income of the insured individual who has the greatest primary insurance amount, except that such child's insurance benefits for such month shall be the largest benefit to which such child could be entitled under subsection (d) (without the application of section 203(a)) or subsection (m) if entitlement to such benefit would not, with respect to any person, result in a benefit lower (after the application of section 203(a)) than the benefit which

[1] P.L. 98-21, §334(a)(2), inserted this new clause (iii), effective with respect to survivors whose applications for monthly benefits are filed after June 1983.

[2] P.L. 98-21, §334(a)(1), redesignated the former clause (iii) as clause (iv), effective with respect to survivors whose applications for monthly benefits are filed after June 1983.

[3] P.L. 98-21, §334(a)(1), redesignated the former clause (iv) as clause (v), effective with respect to survivors whose applications for monthly benefits are filed after June 1983.

would be applicable if such child were entitled on the wages and self-employment income of the individual with the greatest primary insurance amount. Where more than one child is entitled to child's insurance benefits pursuant to the preceding provisions of this paragraph, each such child who is entitled on the wages and self-employment income of the same insured individuals shall be entitled on the wages and self-employment income of the same such insured individual.

(B) Any individual (other than an individual to whom subsection (e)(3)[1] or (f)(4)[2] applies) who, under the preceding provisions of this section and under the provisions of section 223, is entitled for any month to more than one monthly insurance benefit (other than an old-age or disability insurance benefit) under this title shall be entitled to only one such monthly benefit for such month, such benefit to be the largest of the monthly benefits to which he (but for this subparagraph (B)) would otherwise be entitled for such months. Any individual who is entitled for any month to more than one widow's or widower's insurance benefit to which subsection (e)(3)[3] or (f)(4)[4] applies shall be entitled to only one such benefit for such month, such benefit to be the largest of such benefits.

(3)(A) If an individual is entitled to an old-age or disability insurance benefit for any month and to any other monthly insurance benefit for such month, such other insurance benefit for such month, after any reduction under subsection (q), subsection (e)(2) or (f)(3), and any reduction under section 203(a), shall be reduced, but not below zero, by an amount equal to such old-age or disability insurance benefit (after reduction under such subsection (q)).

(B) If an individual is entitled for any month to a widow's or widower's insurance benefit to which subsection (e)(3)[5] or (f)(4)[6] applies and to any other monthly insurance benefit under section 202 (other than an old-age insurance benefit), such other insurance benefit for such month, after any reduction under subparagraph (A), any reduction under subsection (q), and any reduction under section 203(a), shall be reduced, but not below zero, by an amount equal to such widow's or widower's insurance benefit after any reduction or reductions under such subparagraph (A) and such section 203(a).

(4) Any individual who, under this section and section 223, is entitled for any month to both an old-age insurance benefit and a disability insurance benefit under this title shall be entitled to only the larger of such benefits for such month, except that, if such individual so elects, he shall instead be entitled to only the smaller of such benefits for such month.

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[1]P.L. 98-21, §131(a)(3)(G), struck out "(4)" and substituted "(3)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[2]P.L. 98-21, §131(b)(3)(F), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[3]P.L. 98-21, §131(a)(3)(G), struck out "(4)" and substituted "(3)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[4]P.L. 98-21, §131(b)(3)(F), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[5]P.L. 98-21, §131(a)(3)(G), struck out "(4)" and substituted "(3)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6]P.L. 98-21, §131(b)(3)(F), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

Entitlement to Survivor Benefits Under Railroad Retirement Act

(l) If any person would be entitled, upon filing application therefor to an annuity under section 2 of the Railroad Retirement Act of 1974[1], or to a lump-sum payment under section 6(b) of such Act, with respect to the death of an employee (as defined in such Act) no lump-sum death payment, and no monthly benefit for the month in which such employee died or for any month thereafter, shall be paid under this section to any person on the basis of the wages and self-employment income of such employee.

[(m) Repealed.[2]]

Termination of Benefits Upon Deportation of Primary Beneficiary

(n)(1) If any individual is (after the date of enactment of this subsection[3]) deported under paragraph (1), (2), (4), (5), (6), (7), (10), (11), (12), (14), (15), (16), (17), or (18) of section 241(a) of the Immigration and Nationality Act[4], then, notwithstanding any other provisions of this title—

(A) no monthly benefit under this section or section 223 shall be paid to such individual, on the basis of his wages and self-employment income, for any month occurring (i) after the month in which the Secretary is notified by the Attorney General that such individual has been so deported, and (ii) before the month in which such individual is thereafter lawfully admitted to the United States for permanent residence,

(B) if no benefit could be paid to such individual (or if no benefit could be paid to him if he were alive) for any month by reason of subparagraph (A), no monthly benefit under this section shall be paid, on the basis of his wages and self-employment income, for such month to any other person who is not a citizen of the United States and is outside the United States for any part of such month, and

(C) no lump-sum death payment shall be made on the basis of such individual's wages and self-employment income if he dies (i) in or after the month in which such notice is received, and (ii) before the month in which he is thereafter lawfully admitted to the United States for permanent residence.

Section 203(b), (c), and (d) of this Act shall not apply with respect to any such individual for any month for which no monthly benefit may be paid to him by reason of this paragraph.

(2) As soon as practicable after the deportation of any individual under any of the paragraphs of section 241(a) of the Immigration and Nationality Act[5] enumerated in paragraph (1) in this subsection, the Attorney General shall notify the Secretary of such deportation.

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[1]P.L. 75-162 [as amended by P.L. 93-445].

[2]P.L. 97-35, §2201(b)(10), repealed subsection (m), effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]September 1, 1954 [P.L. 83-761, §107; 68 Stat. 1083].

[4]P.L. 82-414.

[5]P.L. 82-414.

Application for Benefits by Survivors of Members and Former Members of the Uniformed Services

(o) In the case of any individual who would be entitled to benefits under subsection (d), (e), (g), or (h), upon filing proper application therefor, the filing with the Administrator of Veterans' Affairs by or on behalf of such individual of an application for such benefits, on the form described in section 3005 of title 38, United States Code, shall satisfy the requirement of such subsection (d), (e), (g), or (h) that an application for such benefits be filed.

Extension of Period for Filing Proof of Support and Applications for Lump-Sum Death Payment

(p) In any case in which there is a failure—

(1) to file proof of support under[1] subparagraph (B) of subsection (h)(1), or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950[2], within the period prescribed by such subparagraph or clause, or

(2) to file, in the case of a death after 1946, application for a lump-sum death payment under subsection (i), or under subsection (g) of this section as in effect prior to the Social Security Act Amendments of 1950[3], within the period prescribed by such subsection,

any such proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

Reduction of Benefit Amounts for Certain Beneficiaries

(q)(1) Subject to paragraph (9), if[4] the first month for which an individual is entitled to an old-age, wife's, husband's, widow's, or widower's insurance benefit is a month before the month in which such individual attains retirement age, the amount of such benefit for such month and for any subsequent month shall, subject to the succeeding paragraphs of this subsection, be reduced by—

(A) 5/9 of 1 percent of such amount if such benefit is an old-age insurance benefit, 25/36 of 1 percent of such amount if such benefit is a wife's or husband's insurance benefit, or 19/40 of 1 percent of such amount if such benefit is a widow's or widower's insurance benefit, multiplied by—[5]

(B)(i) the number of months in the reduction period for such benefit (determined under paragraph (6)[6]), if such benefit is for a month before the month in which such individual attains retirement age, or

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[1]P.L. 95-216, §334(d)(5), struck out "subparagraph (C) of subsection (c)(1), clause (i) or (ii) of subparagraph (D) of subsection (f)(1), or".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

[2]P.L. 81-734.

[3]P.L. 81-734.

[4]P.L. 98-21, §201(b)(2), struck out "If" and substituted "Subject to paragraph (9), if", effective April 20, 1983.

[5]As in original.

[6]P.L. 98-21, §134(a)(2)(C), struck out "(A)", effective with respect to benefits for months after December 1983.

(ii) if less, the number of such months in the adjusted reduction period for such benefit (determined under paragraph (7)), if such benefit is (I) for the month in which such individual attains age 62, or (II) for the month in which such individual attains retirement age.[1]

(2) If an individual is entitled to a disability insurance benefit for a month after a month for which such individual was entitled to an old-age insurance benefit, such disability insurance benefit for each month shall be reduced by the amount such old-age insurance benefit would be reduced under paragraphs (1) and (4) for such month had such individual attained retirement age (as defined in section 216(l))[2] in the first month for which he most recently became entitled to a disability insurance benefit.

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains retirement age (as defined in section 216(l))[3]), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

(B) For any month for which such individual is entitled to an old-age insurance benefit and is not entitled to a disability insurance benefit, such individual's wife's or husband's insurance benefit shall be reduced by the sum of—

(i) the amount by which such old-age insurance benefit is reduced under paragraph (1) for such month, and

(ii) the amount by which such wife's or husband's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's or husband's insurance benefit (before reduction under this subsection) over such old-age insurance benefit (before reduction under this subsection).

(C) For any month for which such individual is entitled to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the sum of—

(i) the amount by which such disability insurance benefit is reduced under paragraph (2) for such month (if such paragraph applied to such benefit), and

(ii) the amount by which such wife's, husband's, widow's, or widower's insurance benefit would be reduced under paragraph (1) for such month if it were equal to the excess of such wife's,

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[1] P.L. 98-21, §134(a)(1), struck from paragraph (1) "; and in the case of a widow or widower whose first month of entitlement to a widow's or widower's insurance benefit is a month before the month in which such widow or widower attains age 60, such benefit, reduced pursuant to the preceding provisions of this paragraph (and before the application of the second sentence of paragraph (8)), shall be further reduced by—" and struck out subparagraphs (C) and (D) and substituted a period, effective with respect to benefits for months after December 1983.

[2] P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3] P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

husband's, widow's, or widower's insurance benefit (before reduction under this subsection) over such disability insurance benefit (before reduction under this subsection).

(D) For any month for which such individual is entitled neither to an old-age insurance benefit nor to a disability insurance benefit, such individual's wife's, husband's, widow's, or widower's insurance benefit shall be reduced by the amount by which it would be reduced under paragraph (1).

(E) If the first month for which an individual is entitled to an old-age insurance benefit (whether such first month occurs before, with, or after the month in which such individual attains the retirement age (as defined in section 216(l))[1]) is a month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower or surviving divorced husband[2], be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such old-age insurance benefit shall be reduced by whichever of the following is the larger:

(i) the amount by which (but for this subparagraph) such old-age insurance benefit would have been reduced under paragraph (1), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6)[3] ended with the month before the month in which she or he attained age 62 and (II) the amount by which such old-age insurance benefit would be reduced under paragraph (1) if it were equal to the excess of such old-age insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(F) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs with or after the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower or surviving divorced husband[4], be) entitled to a widow's or widower's insurance benefit to which such individual was first entitled for a month before she or he attained retirement age, then such disability insurance benefit for each month shall be reduced by whichever of the following is larger:

(i) the amount by which (but for this subparagraph) such disability insurance benefit would have been reduced under paragraph (2), or

(ii) the amount equal to the sum of (I) the amount by which such widow's or widower's insurance benefit would be reduced under paragraph (1) if the period specified in paragraph (6)[5]

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[1]P.L. 98-21, §201(c)(1)(A), struck out "age of 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[2]P.L. 98-21, §309(b), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §134(a)(2)(C), struck out "(A)", effective with respect to benefits for months after December 1983.

[4]P.L. 98-21, §309(b), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §134(a)(2)(C), struck out "(A)", effective with respect to benefits for months after December 1983.

ended with the month before the month in which she or he attained age 62 and (II) the amount by which such disability insurance benefit would be reduced under paragraph (2) if it were equal to the excess of such disability insurance benefit (before reduction under this subsection) over such widow's or widower's insurance benefit (before reduction under this subsection).

(G) If the first month for which an individual is entitled to a disability insurance benefit (when such first month occurs before the month in which such individual attains the age of 62) is a month for which such individual is also (or would, but for subsection (e)(1) in the case of a widow or surviving divorced wife or subsection (f)(1) in the case of a widower or surviving divorced husband[1], be) entitled to a widow's or widower's insurance benefit, then such disability insurance benefit for each month shall be reduced by the amount such widow's or widower's insurance benefit would be reduced under paragraphs (1) and (4) for such month as if the period specified in paragraph (6)[2] ended with the month before the first month for which she or he most recently became entitled to a disability insurance benefit.

(H) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased[3] by reason of an increase[4] in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase[5] in the primary insurance

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[1]P.L. 98-21, §309(b), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §134(a)(2)(B), struck out "(A) (or, if such paragraph does not apply, the period specified in paragraph (6)(B))", effective with respect to benefits for months after December 1983.

[3]P.L. 97-35, §2201(d)(1), struck out "increased" and substituted "changed", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(1), struck out "changed" and substituted "increased". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-35, §2201(d)(1), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(1), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[5]P.L. 97-35, §2201(d)(1), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months

amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased[1] primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

(5)(A) No wife's or husband's[2] insurance benefit shall be reduced under this subsection—

(i) for any month before the first month for which there is in effect a certificate filed by him or[3] her with the Secretary, in accordance with regulations prescribed by him, in which he or[4] she elects to receive wife's or husband's[5] insurance benefits reduced as provided in this subsection, or

(ii) for any month in which he or[6] she has in his or[7] her care (individually or jointly with the person on whose wages and self-employment income the[8] wife's or husband's[9] insurance benefit is based) a child of such person entitled to child's insurance benefits.

(B) Any certificate described in subparagraph (A)(i) shall be effective for purposes of this subsection (and for purposes of preventing deductions under section 203(c)(2))—

(i) for the month in which it is filed and for any month thereafter, and

(ii) for months, in the period designated by the individual[10] filing such certificate, of one or more consecutive months (not exceeding 12) immediately preceding the month in which such certificate is filed;

except that such certificate shall not be effective for any month before the month in which he or[11] she attains age 62, nor shall it be effective for any month to which subparagraph (A)(ii) applies.

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after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(1), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[1]P.L. 97-35, §2201(d)(1), struck out "increased" and substituted "changed", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(1), struck out "changed" and substituted "increased". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[2]P.L. 98-21, §309(c)(1), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §309(c)(2), inserted "him or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §309(c)(1), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §309(c)(5), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §309(c)(3), struck out "her" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §309(c)(1), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §309(c)(6), struck out "woman" and substituted "individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(C) If an individual[1] does not have in his or[2] her care a child described in subparagraph (A)(ii) in the first month for which he or[3] she is entitled to a wife's or husband's[4] insurance benefit, and if such first month is a month before the month in which he or[5] she attains retirement age (as defined in section 216(l))[6], she shall be deemed to have filed in such first month the certificate described in subparagraph (A)(i).

(D) No widow's or widower's[7] insurance benefit for a month in which he or[8] she has in his or[9] her care a child of his or[10] her deceased spouse[11] (or deceased former spouse[12]) entitled to child's insurance benefits shall be reduced under this subsection below the amount to which he or[13] she would have been entitled had he or[14] she been entitled for such month to mother's or father's[15] insurance benefits on the basis of his or[16] her deceased spouse's[17] (or deceased former spouse's[18]) wages and self-employment income.

(6) For purposes of this subsection, the "reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the period—

(A) beginning—

(i) in the case of an old-age[19] insurance benefit, with the first day of the first month for which such individual is entitled to such benefit,

(ii) in the case of a wife's or husband's[20] insurance benefit, with the first day of the first month for which a certificate described in paragraph (5)(A)(i) is effective, or

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[1]P.L. 98-21, §309(c)(6), struck out "a woman" and substituted "an individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §309(c)(5), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §309(c)(1), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[7]P.L. 98-21, §309(c)(7)(A), inserted "or widower's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §309(c)(5), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §309(c)(5), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §309(c)(7)(B), struck out "husband" and substituted "spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §309(c)(7)(B), struck out "husband" and substituted "spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[13]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[14]P.L. 98-21, §309(c)(4), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[15]P.L. 98-21, §309(c)(7)(D), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[16]P.L. 98-21, §309(c)(5), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[17]P.L. 98-21, §309(c)(7)(C), struck out "husband's" and substituted "spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[18]P.L. 98-21, §309(c)(7)(C), struck out "husband's" and substituted "spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[19]P.L. 98-21, §309(d)(1), struck out "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[20]P.L. 98-21, §309(d)(1), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(iii) in the case of a widow's or widower's insurance benefit, with the first day of the first month for which such individual is entitled to such benefit or the first day of the month in which such individual attains age 60, whichever is the later, and

(B) ending with the last day of the month before the month in which such individual attains retirement age.[1]

(7) For purposes of this subsection, the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding[2]—

(A) any month in which such benefit was subject to deductions under section 203(b), 203(c)(1), 203(d)(1), or 222(b),

(B) in the case of wife's or husband's[3] insurance benefits, any month in which such individual[4] had in his or[5] her care (individually or jointly with the person on whose wages and self-employment income such benefit is based) a child of such person entitled to child's insurance benefits,

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

(D) in the case of widow's or widower's[6] insurance benefits, any month in which the reduction in the amount of such benefit was determined under paragraph (5)(D),

(E) in the case of widow's or widower's insurance benefits, any month before the month in which she or he attained age 62, and also for any later month before the month in which he[7] attained retirement age, for which she or he was not entitled to such benefit because of the occurrence of an event that terminated her or his entitlement to such benefits, and

(F) in the case of old-age insurance benefits, any month for which such individual was entitled to a disability insurance benefit.

(8) This subsection shall be applied after reduction under section 203(a) and before[8] application of section 215(g). If the amount of any reduction computed under paragraph (1), (2), or (3) is not a multiple of $0.10, it shall be increased to the next higher[9] multiple of $0.10.

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[1]P.L. 98-21, §134(a)(2)(A), amended paragraph (6) in its entirety, effective with respect to benefits for months after December 1983.

[2]P.L. 98-21, §134(a)(3), struck out "the 'adjusted reduction period' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6)(A) for such benefit, and the 'additional adjusted reduction period' for an individual's, widow's, or widower's insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit, excluding from each such period" and substituted ", the 'adjusted reduction period' for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6) for such benefit, excluding", effective with respect to benefits for months after December 1983.

[3]P.L. 98-21, §309(d)(2)(A), inserted "or husband's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §309(d)(2)(A), struck out "she" and substituted "such individual", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §309(d)(2)(A), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §309(d)(2)(B), inserted "or widower's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]As in original. Should be "she or he".

[8]P.L. 97-35, §2206(b)(1)(A), struck out "after" and substituted "before", effective only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[9]P.L. 97-35, §2206(b)(1)(B), struck out "reduced to the next lower" and substituted "increased to

(9) The amount of the reduction for early retirement specified in paragraph (1)—

(A) for old-age insurance benefits, wife's insurance benefits, and husband's insurance benefits, shall be the amount specified in such paragraph for the first 36 months of the reduction period (as defined in paragraph (6)) or adjusted reduction period (as defined in paragraph (7)), and five-twelfths of 1 percent for any additional months included in such periods; and

(B) for widow's insurance benefits and widower's insurance benefits, shall be periodically revised by the Secretary such that—

(i) the amount of the reduction at early retirement age as defined in section 216(a) shall be 28.5 percent of the full benefit; and

(ii) the amount of the reduction for each month in the reduction period (specified in paragraph (6)) or the adjusted reduction period (specified in paragraph (7)) shall be established by linear interpolation between 28.5 percent at the month of attainment of early retirement age and 0 percent at the month of attainment of retirement age.[1]

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased[2] by reason of an increase[3] in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases[4]) shall be increased[5] by a

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the next higher", effective only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[1]P.L. 98-21, §201(b)(1), amended paragraph (9) in its entirety, effective April 20, 1983.

[2]P.L. 97-35, §2201(d)(2), struck out "increased" and substituted "changed", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "changed" and substituted "increased". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[3]P.L. 97-35, §2201(d)(2), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-35, §2201(d)(2), struck out "increases" and substituted "changes", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "changes" and substituted "increases". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[5]P.L. 97-35, §2201(d)(2), struck out "increased" and substituted "changed", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new

percentage equal to the percentage increase[1] in such primary insurance amount (such increase[2] being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased[3] as a result of the use of an adjusted reduction period[4] (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase[5] is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent[6] to (ii) the number of months in the reduction period multiplied by 19/40 of 1 percent,[7] and

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effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "changed" and substituted "increased". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[1]P.L. 97-35, §2201(d)(2), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[2]P.L. 97-35, §2201(d)(2), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[3]P.L. 97-35, §2201(d)(2), struck out "increased" and substituted "changed", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "changed" and substituted "increased". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[4]P.L. 98-21, §134(a)(4)(A), struck out "or an additional adjusted reduction period", effective with respect to benefits for months after December 1983.

[5]P.L. 97-35, §2201(d)(2), struck out "increase" and substituted "change", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(e)(2), struck out "change" and substituted "increase". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[6]P.L. 98-21, §134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent", effective with respect to benefits for months after December 1983.

[7]P.L. 98-21, §134(a)(4)(C), struck out "plus the number of months in the additional reduction period multiplied by 43/240 of 1 percent,", effective with respect to benefits for months after December 1983.

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains retirement age (as defined in section 216(l))[1], by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by 19/40 of 1 percent[2] to (ii) the number of months in the reduction period beginning with age 62 multiplied by 19/40 of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by 19/40 of 1 percent,[3]

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this title and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of this paragraph shall operate in conjunction with paragraph (3).

Presumed Filing of Application by Individuals Eligible for Old-Age Insurance Benefits and for Wife's or Husband's Insurance Benefits

(r)(1) If the first month for which an individual is entitled to an old-age insurance benefit is a month before the month in which such individual attains retirement age (as defined in section 216(l))[4], and if such individual is eligible for a wife's or husband's insurance benefit for such first month, such individual shall be deemed to have filed an application in such month for wife's or husband's insurance benefits.

(2) If the first month for which an individual is entitled to a wife's or husband's insurance benefit reduced under subsection (q) is a month before the month in which such individual attains retirement age (as defined in section 216(l))[5], and if such individual is eligible (but for section 202(k)(4)) for an old-age insurance benefit for such first month, such individual shall be deemed to have filed an application for old-age insurance benefits—

(A) in such month, or

(B) if such individual is also entitled to a disability insurance benefit for such month, in the first subsequent month for which such individual is not entitled to a disability insurance benefit.

(3) For purposes of this subsection, an individual shall be deemed eligible for a benefit for a month if, upon filing application therefor in such month, he would be entitled to such benefit for such month.

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[1]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[2]P.L. 98-21, §134(a)(4)(B), struck out ", plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent", effective with respect to benefits for months after December 1983.

[3]P.L. 98-21, §134(a)(4)(D), struck out "plus the number of months in the adjusted additional reduction period multiplied by 43/240 of 1 percent.", effective with respect to benefits for months after December 1983.

[4]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[5]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

Child Over Specified Age to be Disregarded for Certain Benefit Purposes Unless Disabled[1]

(s)(1) For the purposes of subsections (b)(1), (c)(1),[2] (g)(1), (q)(5), and (q)(7) of this section and paragraphs (2), (3), and (4) of section 203(c), a child who is entitled to child's insurance benefits under subsection (d) for any month, and who has attained the age of 16[3] but is not in such month under a disability (as defined in section 223(d)), shall be deemed not entitled to such benefits for such month, unless he was under such a disability in the third month before such month.

(2) So much of subsections (b)(3), (c)(4),[4] (d)(5)[5], (g)(3), and (h)(4) of this section as precedes the semicolon, shall not apply in the case of any child unless such child, at the time of the marriage referred to therein, was under a disability (as defined in section 223(d)) or had been under such a disability in the third month before the month in which such marriage occurred.

(3) The[6] last sentence of subsection (c) of section 203, subsection (f)(1)(C) of section 203, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 216 shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 223(d)).

Suspension of Benefits of Aliens Who Are Outside the United States; Residency Requirements for Dependents and Survivors[7]

(t)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual who is not a citizen or national of the United States for any month which is—

(A) after the sixth consecutive calendar month during all of which the Secretary finds, on the basis of information furnished

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[1]P.L. 97-35, §2205(a)(2), struck out "Child Aged 18 or Over Attending School" and substituted "Child Over Specified Age to be Disregarded for Certain Benefit Purposes Unless Disabled", effective with respect to wife's and mother's benefits for months after August 1981; except that, in the case of an individual who is entitled to such a benefit (on the basis of having a child in her care) for August 1981, this amendment shall not take effect until September 1, 1983.

[2]P.L. 98-21, §309(e)(1), inserted "(c)(1),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 97-35, §2205(a)(1), struck out "18" and substituted "16", effective with respect to wife's and mother's benefits for months after August 1981; except that, in the case of an individual who is entitled to such a benefit (on the basis of having a child in her care) for August 1981, this amendment shall not take effect until September 1, 1983.

[4]P.L. 98-21, §309(e)(2), inserted "(c)(4),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §131(c)(1), struck out "Subsection (f)(4), and so much of subsections (b)(3), (d)(5), (e)(3)" and substituted "So much of subsections (b)(3), (d)(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6]P.L. 98-21, §309(e)(3), struck out "So much of subsections (b)(3), (d)(5), (g)(3), and (h)(4) of this section as follows the semicolon, the" and substituted "The", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

P.L. 95-216, §334(d)(6), with respect to the stricken text, struck out "Subsections (c)(2)(B) and (f)(2)(B) of this section, so" and substituted "So".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for the P.L. 95-216 amendment. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

P.L. 98-21, §131(c)(2), also with respect to the stricken text, struck out "(e)(3),", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[7]P.L. 98-21, §340(a)(1), inserted "; Residency Requirements for Dependents and Survivors", effective with respect to any individual who initially becomes eligible for benefits under §202 or §223 after December 31, 1984.

See P.L. 97-127, "Czechoslovakian Claims Settlement Act of 1981", §11, with respect to the Czechoslovakian social insurance system.

to him by the Attorney General or information which otherwise comes to his attention, that such individual is outside the United States, and

(B) prior to the first month thereafter for all of which such individual has been in the United States.

For purposes of the preceding sentence, after an individual has been outside the United States for any period of thirty consecutive days he shall be treated as remaining outside the United States until he has been in the United States for a period of thirty consecutive days.

(2) Subject to paragraph (11), paragraph[1] (1) shall not apply to any individual who is a citizen of a foreign country which the Secretary finds has in effect a social insurance or pension system which is of general application in such country and under which—

(A) periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, retirement, or death, and

(B) individuals who are citizens of the United States but not citizens of such foreign country and who qualify for such benefits are permitted to receive such benefits or the actuarial equivalent thereof while outside such foreign country without regard to the duration of the absence.

(3) Paragraph (1) shall not apply in any case where its application would be contrary to any treaty obligation of the United States in effect on the date of the enactment of this subsection[2].

(4) Subject to paragraph (11), paragraph[3] (1) shall not apply to any benefit for any month if—

(A) not less than forty of the quarters elapsing before such month are quarters of coverage for the individual on whose wages and self-employment income such benefit is based, or

(B) the individual on whose wages and self-employment income such benefit is based has, before such month, resided in the United States for a period or periods aggregating ten years or more, or

(C) the individual entitled to such benefit is outside the United States while in the active military or naval service of the United States, or

(D) the individual on whose wages and self-employment income such benefit is based died, before such month, either (i) while on active duty or inactive duty training (as those terms are defined in section 210(l)(2) and (3)) as a member of a uniformed service (as defined in section 210(m)), or (ii) as the result of a disease or injury which the Administrator of Veterans' Affairs determines was incurred or aggravated in line of duty while on active duty (as defined in section 210(l)(2)), or an injury which he determines was incurred or aggravated in line of duty while on inactive duty training (as defined in section 210(l)(3)), as a member of a uniformed service (as defined in section 210(m)), if the Administrator determines that such individual was discharged or released from the period of such active duty or inactive duty

[1]P.L. 98-21, §340(b), struck out "Paragraph" and substituted "Subject to paragraph (11), paragraph", effective with respect to any individual who initially becomes eligible for benefits under §202 or §223 after December 31, 1984.

[2]August 1, 1956 [P.L. 84-880, §118(a); 70 Stat. 835, 856].

[3]P.L. 98-21, §340(b), struck out "Paragraph" and substituted "Subject to paragraph (11), paragraph", effective with respect to any individual who initially becomes eligible for benefits under §202 or §223 after December 31, 1984.

training under conditions other than dishonorable, and if the Administrator certifies to the Secretary his determinations with respect to such individual under this clause, or

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act which was treated as employment covered by this Act pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act[1];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted[2] (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123)[3].

(5) No person who is, or upon application would be, entitled to a monthly benefit under this section for December 1956 shall be deprived, by reason of paragraph (1), of such benefit or any other benefit based on the wages and self-employment income of the individual on whose wages and self-employment income such monthly benefit for December 1956 is based.

(6) If an individual is outside the United States when he dies and no benefit may, by reason of paragraph (1) or (10), be paid to him for the month preceding the month in which he dies, no lump-sum death payment may be made on the basis of such individual's wages and self-employment income.

(7) Subsections (b), (c), and (d) of section 203 shall not apply with respect to any individual for any month for which no monthly benefit may be paid to him by reason of paragraph (1) of this subsection.

(8) The Attorney General shall certify to the Secretary such information regarding aliens who depart from the United States to any foreign country (other than a foreign country which is territorially contiguous to the continental United States) as may be necessary to enable the Secretary to carry out the purposes of this subsection and shall otherwise aid, assist, and cooperate with the Secretary in obtaining such other information as may be necessary to enable the Secretary to carry out the purposes of this subsection.

(9) No payments shall be made under part A of title XVIII with respect to items or services furnished to an individual in any month for which the prohibition in paragraph (1) against payment of benefits to him is applicable (or would be if he were entitled to any such benefits).

(10) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223, for any month beginning after June 30, 1968, to an individual who is not a

[1]P.L. 93-445, §101, amended the Railroad Retirement Act of 1937 in its entirety, effective January 1, 1975. In general, §2 of the 1974 Act replaces §5 of the 1937 Act. See P.L. 75-162, "Railroad Retirement Act of 1974", §2.

[2]January 2, 1968 [P.L. 90-248; 81 Stat. 821].

[3]P.L. 97-258, §5(b), repealed the Act of October 9, 1940. See, instead, 31 U.S.C. 3329.

citizen or national of the United States and who resides during such month in a foreign country if payments for such month to individuals residing in such country are withheld by the Treasury Department under the first section of the Act of October 9, 1940 (31 U.S.C. 123)[1].

(11)(A) Paragraph (2) and subparagraphs (A), (B), (C), and (E) of paragraph (4) shall apply with respect to an individual's monthly benefits under subsection (b), (c), (d), (e), (f), (g), or (h) only if such individual meets the residency requirements of this paragraph with respect to those benefits.

(B) An individual entitled to benefits under subsection (b), (c), (e), (f), or (g) meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing bore a spousal relationship to the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years. For purposes of this subparagraph, a period of time for which an individual bears a spousal relationship to another person consists of a period throughout which the individual has been, with respect to such other person, a wife, a husband, a widow, a widower, a divorced wife, a divorced husband, a surviving divorced wife, a surviving divorced husband, a surviving divorced mother, a surviving divorced father, or (as applicable in the course of such period) any two or more of the foregoing.

(C) An individual entitled to benefits under subsection (d) meets the residency requirements of this paragraph with respect to those benefits only if—

(i)(I) such individual has resided in the United States (as the child of the person on whose wages and self-employment income such entitlement is based) for a total period of not less than 5 years, or

(II) the person on whose wages and self-employment income such entitlement is based, and the individual's other parent (within the meaning of subsection (h)(3)), if any, have each resided in the United States for a total period of not less than 5 years (or died while residing in the United States), and

(ii) in the case of an individual entitled to such benefits as an adopted child, such individual was adopted within the United States by the person on whose wages and self-employment income such entitlement is based, and has lived in the United States with such person and received at least one-half of his or her support from such person for a period (beginning before such individual attained age 18) consisting of—

(I) the year immediately before the month in which such person became eligible for old-age insurance benefits or disability insurance benefits or died, whichever occurred first, or

(II) if such person had a period of disability which continued until he or she became entitled to old-age insurance benefits or disability insurance benefits or died, the year immediately before the month in which such period of

[1] P.L. 97-258, §5(b), repealed the Act of October 9, 1940. See, instead, 31 U.S.C. 3329.

disability began.

(D) An individual entitled to benefits under subsection (h) meets the residency requirements of this paragraph with respect to those benefits only if such individual has resided in the United States, and while so residing was a parent (within the meaning of subsection (h)(3)) of the person on whose wages and self-employment income such entitlement is based, for a total period of not less than 5 years.

(E) This paragraph shall not apply with respect to any individual who is a citizen or resident of a foreign country with which the United States has an agreement in force concluded pursuant to section 233, except to the extent provided by such agreement.[1]

Conviction of Subversive Activities, Etc.

(u)(1) If any individual is convicted of any offense (committed after the date of the enactment of this subsection[2]) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18 of the United States Code, or

(B) section 4, 112, or 113 of the Internal Security Act of 1950, as amended[3],

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 223 is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of title XVIII for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

(2) As soon as practicable after an additional penalty has, pursuant to paragraph (1), been imposed with respect to any individual, the Attorney General shall notify the Secretary of such imposition.

(3) If any individual with respect to whom an additional penalty has been imposed pursuant to paragraph (1) is granted a pardon of the offense by the President of the United States, such additional penalty shall not apply for any month beginning after the date on which such pardon is granted.

Waiver of Benefits

(v) Notwithstanding any other provisions of this title, in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1954[4] and is granted a tax exemption

[1] P.L. 98-21, §340(a)(2), added paragraph (11), effective with respect to any individual who initially becomes eligible for benefits under §202 or §223 after December 31, 1984.

[2] August 1, 1956 [P.L. 84-880, §121(a); 70 Stat. 838, 856].

[3] See P.L. 81-831, §4; September 23, 1950 [50 U.S.C. 783]. P.L. 92-128, §2(a), repealed §112 and §113, effective September 25, 1971.

[4] See P.L. 83-591, "Internal Revenue Code of 1954", §1402(g), p. 810.

thereunder, no benefits or other payments shall be payable under this title to him, no payments shall be made on his behalf under part A of title XVIII, and no benefits or other payments under this title shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(g)[1] ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this title and part A of title XVIII to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

Increase in Old-Age Insurance Benefit Amounts on Account of Delayed Retirement

(w)(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 215(a)(3) as in effect in December 1978 or section 215(a)(1)(C)(i)[2] as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) the applicable percentage (as determined under paragraph (6)) of such amount, multiplied by[3]

(B) the number (if any) of the increment months for such individual.

(2) For purposes of this subsection, the number of increment months for any individual shall be a number equal to the total number of the months—

(A) which have elapsed after the month before the month in which such individual attained retirement age (as defined in section 216(l))[4] or (if later) December 1970 and prior to the month in which such individual attained age 70[5], and

(B) with respect to which—

(i) such individual was a fully insured individual (as defined in section 214(a)), and

(ii) such individual either was not entitled to an old-age insurance benefit or suffered deductions under section 203(b) or 203(c) in amounts equal to the amount of such benefit.

(3) For purposes of applying the provisions of paragraph (1), a determination shall be made under paragraph (2) for each year, beginning with 1972, of the total number of an individual's increment months through the year for which the determination is made and the total so determined shall be applicable to such individual's

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §1402(g), p. 810.

[2]P.L. 97-35, §2201(b)(11), struck out "215(a)(1)(C)(i)(II)" and substituted "215(a)(1)(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]P.L. 98-21, §114(a), amended subparagraph (A) in its entirety, effective April 20, 1983.

[4]P.L. 98-21, §201(c)(1)(A), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[5]P.L. 98-21, §114(c)(1), struck out "72" and substituted "70", effective with respect to increment months in calendar years after 1983.

old-age insurance benefits beginning with benefits for January of the year following the year for which such determination is made; except that the total number applicable in the case of an individual who attains age 70[1] after 1972 shall be determined through the month before the month in which he attains such age and shall be applicable to his old-age insurance benefit beginning with the month in which he attains such age.

(4) This subsection shall be applied after reduction under section 203(a).

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 215(a) as in effect in December 1978, or section 215(a)(1)(C)(i)[2] as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under section 215(a) (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(6) For purposes of paragraph (1)(A), the "applicable percentage" is—

(A) 1/12 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year before 1979;

(B) 1/4 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in any calendar year after 1978 and before 1987;

(C) in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 1986 and before 2005, a percentage equal to the applicable percentage in effect under this paragraph for persons who first became eligible for an old-age insurance benefit in the preceding calendar year (as increased pursuant to this subparagraph), plus 1/24 of 1 percent if the calendar year in which that particular individual first becomes eligible for such benefit is not evenly divisible by 2; and

(D) 2/3 of 1 percent in the case of an individual who first becomes eligible for an old-age insurance benefit in a calendar year after 2004.[3]

(x)(1) Notwithstanding any other provision of this title, no monthly benefits shall be paid under this section or under section 223 to any individual for any month during which such individual is confined in a jail, prison, or other penal institution or correctional facility, pursuant to his conviction of an offense which constituted a felony

[1]P.L. 98-21, §114(c)(1), struck out "72" and substituted "70", effective with respect to increment months in calendar years after 1983.

[2]P.L. 97-35, §2201(b)(11), struck out "215(a)(1)(C)(i)(II)" and substituted "215(a)(1)(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]P.L. 98-21, §114(b), added paragraph (6), effective April 20, 1983.

under applicable law, unless such individual is actively and satisfactorily participating in a rehabilitation program which has been specifically approved for such individual by a court of law and, as determined by the Secretary, is expected to result in such individual being able to engage in substantial gainful activity upon release and within a reasonable time.

(2) Benefits which would be payable to any individual (other than a confined individual to whom benefits are not payable by reason of paragraph (1)) under this title on the basis of the wages and self-employment income of such a confined individual but for the provisions of paragraph (1), shall be payable as though such confined individual were receiving such benefits under this section or section 223.

(3) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law, any agency of the United States Government or of any State (or political subdivision thereof) shall make available to the Secretary, upon written request, the name and social security account number of any individual who is confined in a jail, prison, or other penal institution or correctional facility under the jurisdiction of such agency, pursuant to his conviction of an offense which constituted a felony under applicable law, which the Secretary may require to carry out the provisions of this subsection.[1]

REDUCTION OF INSURANCE BENEFITS

Maximum Benefits

SEC. 203. [42 U.S.C. 403] (a)(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 215(a)(1) or (4), or section 215(d), as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 202 or 223 for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraphs (3) and (6) (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 215(i)), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

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[1] P.L. 98-21, §339(a), added subsection (x), effective with respect to monthly benefits payable for months beginning on or after April 20, 1983.

Any such amount that is not a multiple of $0.10 shall be decreased to the next lower[1] multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 215(a)(1), with such product being rounded in the manner prescribed by section 215(a)(1)(B)(iii).

(C) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 215(i)(2)(D)) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (8) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 202(k)(2)(A)) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the basis of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount (I) initially equal to the product of 1.75 and the primary insurance amount that would be computed under section 215(a)(1), for January of the year determined for purposes of this clause under the following two sentences, with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 230, and (II) thereafter increased in accordance with the provisions of section 215(i)(2)(A)(ii).[2]

The year established for purposes of clause (ii) shall be 1983 or, if it occurs later with respect to any individual, the year in which

[1] P.L. 97-35, §2206(b)(2), struck out "increased to the next higher" and substituted "decreased to the next lower", effective only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[2] P.L. 98-21, §331(a)(1), amended clause (ii) in its entirety, effective with respect to payments made for months after December 1983.

occurred the month that the application of the reduction provisions contained in this subparagraph began with respect to benefits payable on the basis of the wages and self-employment income of the insured individual.[1] If for any month subsequent to the first month for which clause (ii) applies (with respect to benefits payable on the basis of the wages and self-employment income of the insured individual) the reduction under this subparagraph ceases to apply, then the year determined under the preceding sentence shall be redetermined (for purposes of any subsequent application of this subparagraph with respect to benefits payable on the basis of such wages and self-employment income) as though this subparagraph had not been previously applicable.[2]

(B) When two or more persons were entitled (without the application of section 202(j)(1) and section 223(b)) to monthly benefits under section 202 or 223 for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 215(i)(3)) or a benefit increase under the provisions of section 215(i), an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this title (excluding any part thereof determined under section 202(w)) for the month before such effective month (including this subsection, but without the application of section 222(b), section 202(q), and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next lower[3] multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 202(k)(2)(A) was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 202(k)(2)(A) ceases to apply, as

[1] P.L. 98-21, §331(a)(1), added the preceding sentence to paragraph (3), effective with respect to payments made for months after December 1983.

[2] P.L. 98-21, §331(a)(1), added the preceding sentence to paragraph (3), effective with respect to payments made for months after December 1983.

[3] P.L. 97-35, §2206(b)(3), struck out "higher" and substituted "lower", effective only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) or as a surviving divorced spouse under section 202(e) or (f) for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 202 on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the preceding provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 222(b). Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this title,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 202(q)) than the total of monthly benefits (after the application of the other provisions of this subsection and section 202(q)) payable on the basis of such wages and self-employment income for such particular month.

(6) Notwithstanding any of the preceding provisions of this subsection other than paragraphs (3)(A), (3)(C), and (5) (but subject to section 215(i)(2)(A)(ii)), the total monthly benefits to which beneficiaries may be entitled under sections 202 and 223 for any month on the basis of the wages and self-employment income of an individual entitled to disability insurance benefits, whether or not such total benefits are otherwise subject to reduction under this subsection but after any reduction under this subsection which would otherwise be applicable, shall be, reduced or further reduced (before the application of section 224) to the smaller of—

(A) 85 percent of such individual's average indexed monthly earnings (or 100 percent of his primary insurance amount, if larger), or

(B) 150 percent of such individual's primary insurance amount.

(7) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 215(a) or 215(d) as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 215(a)(1) or (4), or section 215(d), as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).[1]

(8) Subject to paragraph (7), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 215(a) or (d), as in effect (without regard to the table contained therein) in December 1978[2] except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978. For purposes of the preceding sentence, the phrase "rounded to the next higher multiple of $0.10", as it appeared in subsection (a)(2)(C) of this section as in effect in December 1978, shall be deemed to read "rounded to the next lower multiple of $0.10"[3]

(9) When—

(A) one or more persons were entitled (without the application of section 202(j)(1)) to monthly benefits under section 202 for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of

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[1] P.L. 98-21, §331(a)(2), struck out "product of 1.75 and the primary insurance amount that would be computed under section 215(a)(1) for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined under section 230 for the year in which that month occurs." and substituted "amount determined in accordance with the provisions of paragraph (3)(A)(ii) of this subsection, except that for this purpose the references to subparagraph (A) in the last two sentences of paragraph (3)(A) shall be deemed to be references to paragraph (7).", effective with respect to payments made for months after December 1983.

[2] P.L. 97-35, §2201(c)(6), inserted ", modified by the application of section 215(a)(6)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(f), struck out ", modified by the application of section 215(a)(6),". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[3] As in original. Should close with period.

P.L. 97-35, §2206(b)(4), added the preceding sentence, effective only with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

the Social Security Amendments of 1977[1]; and

(C) the total amount of benefits to which all such persons are entitled under such section 202 are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of section 203(a)(4)),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

Deductions on Account of Work

(b)(1)[2] Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, and from any payment or payments to which any other persons are entitled on the basis of such individual's wages and self-employment income, until the total of such deductions equals—

(A)[3] such individual's benefit or benefits under section 202 for any month, and

(B)[4] if such individual was entitled to old-age insurance benefits under section 202(a) for such month, the benefit or benefits of all other persons for such month under section 202 based on such individual's wages and self-employment income,

if for such month he is charged with excess earnings, under the provisions of subsection (f) of this section, equal to the total of benefits referred to in clauses (A) and (B)[5]. If the excess earnings so charged are less than such total of benefits, such deductions with respect to such month shall be equal only to the amount of such excess earnings. If a child who has attained the age of 18 and is entitled to child's insurance benefits, or a person who is entitled to mother's or father's[6] insurance benefits, is married to an individual entitled to old-age insurance benefits under section 202(a), such child or such person, as the case may be, shall, for the purposes of this subsection and subsection (f), be deemed to be entitled to such benefits on the basis of the wages and self-employment income of such individual entitled to old-age insurance benefits. If a deduction has already been made under this subsection with respect to a person's benefit or benefits under section 202 for a month, he shall be deemed entitled to payments under such section for such month for purposes of further deductions under this subsection, and for purposes of charging of each person's excess earnings under subsection (f), only to the extent of the total of his benefits remaining after such earlier deductions have been made. For purposes of this subsection and subsection (f)—

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[1] P.L. 95-216.

[2] P.L. 98-21, §132(b)(1)(A)(i), inserted "(1)", effective with respect to monthly benefits for months after December 1984.

[3] P.L. 98-21, §132(b)(1)(A)(ii), redesignated paragraph (1) as subparagraph (A), effective with respect to monthly benefits for months after December 1984.

[4] P.L. 98-21, §132(b)(1)(A)(ii), redesignated paragraph (2) as subparagraph (B), effective with respect to monthly benefits for months after December 1984.

[5] P.L. 98-21, §132(b)(1)(A)(iii), struck out "(1) and (2)" and substituted "(A) and (B)", effective with respect to monthly benefits for months after December 1984.

[6] P.L. 98-21, §309(f), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(i)[1] an individual shall be deemed to be entitled to payments under section 202 equal to the amount of the benefit or benefits to which he is entitled under such section after the application of subsection (a) of this section, but without the application of the first sentence of paragraph (4)[2] thereof; and

(ii)[3] if a deduction is made with respect to an individual's benefit or benefits under section 202 because of the occurrence in any month of an event specified in subsection (c) or (d) of this section or in section 222(b), such individual shall not be considered to be entitled to any benefits under such section 202 for such month.

(2) When any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202(b) or (c) for any month and such person has been so divorced for not less than 2 years, the benefit to which he or she is entitled on the basis of the wages and self-employment income of the individual referred to in paragraph (1) for such month shall be determined without regard to deductions under this subsection as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 202 on the basis of the wages and self-employment income of such individual referred to in paragraph (1) shall be determined as if no such divorced spouse were entitled to benefits for such month.[4]

Deductions on Account of Noncovered Work Outside the United States or Failure to Have Child in Care[5]

(c) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefits or benefit under section 202 for any month—

(1) in which such individual is under the age of seventy and for more than forty-five hours of which such individual engaged in noncovered remunerative activity outside the United States;

(2) in which such individual, if a wife or husband under retirement age (as defined in section 216(l))[6] entitled to a wife's or husband's insurance benefit, did not have in his or her care (individually or jointly with his or her spouse) a child of such spouse entitled to a child's insurance benefit and such wife's or husband's insurance benefit for such month was not reduced under the provisions of section 202(q);

(3) in which such individual, if a widow or widower entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased spouse entitled to a child's insurance benefit; or

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[1] P.L. 98-21, §132(b)(1)(A)(iv), struck out "(A)" and substituted "(i)", effective with respect to monthly benefits for months after December 1984.

[2] P.L. 98-21, §331(b), struck out "penultimate sentence" and substituted "first sentence of paragraph (4)", effective April 20, 1983.

[3] P.L. 98-21, §132(b)(1)(A)(iv), struck out "(B)" and substituted "(ii)", effective with respect to monthly benefits for months after December 1984.

[4] P.L. 98-21, §132(b)(1)(A)(v), added paragraph (2), effective with respect to monthly benefits for months after December 1984.

[5] P.L. 98-21, §309(g), amended subsection (c) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6] P.L. 98-21, §201(c)(2), struck out "age sixty-five" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

(4) in which such an individual, if a surviving divorced mother or father entitled to a mother's or father's insurance benefit, did not have in his or her care a child of his or her deceased former spouse who (A) is his or her son, daughter, or legally adopted child and (B) is entitled to a child's insurance benefit on the basis of the wages and self-employment income of such deceased former spouse.

For purposes of paragraphs (2), (3), and (4) of this subsection, a child shall not be considered to be entitled to a child's insurance benefit for any month in which paragraph (1) of section 202(s) applies or an event specified in section 222(b) occurs with respect to such child. Subject to paragraph (3) of such section 202(s), no deduction shall be made under this subsection from any child's insurance benefit for the month in which the child entitled to such benefit attained the age of eighteen or any subsequent month; nor shall any deduction be made under this subsection from any widow's insurance benefit for any month in which the widow or surviving divorced wife is entitled and has not attained retirement age (as defined in section 216(l))[1] (but only if she became so entitled prior to attaining age 60), or from any widower's insurance benefit for any month in which the widower or surviving divorced husband is entitled and has not attained retirement age (as defined in section 216(l))[2] (but only if he became so entitled prior to attaining age 60).

Deductions From Dependents' Benefits on Account of Noncovered Work Outside the United States by Old-Age Insurance Beneficiary

(d)(1)(A)[3] Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to old-age insurance benefits, to which a wife, divorced wife, husband, divorced husband,[4] or child is entitled, until the total of such deductions equals such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which such individual is under the age of seventy[5] and on seven or more different calendar days of which he engaged in noncovered remunerative activity outside the United States.

(B) When any divorced spouse is entitled to monthly benefits under section 202(b) or (c) for any month and such divorced spouse has been so divorced for not less than 2 years, the benefit to which he or she is entitled for such month on the basis of the wages and self-employment income of the individual entitled to old-age insurance benefits referred to in subparagraph (A) shall be determined without regard to deductions under this paragraph as a result of excess earnings of such individual, and the benefits of all other individuals who are entitled for such month to monthly benefits under section

[1] P.L. 98-21, §201(c)(1)(B), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[2] P.L. 98-21, §201(c)(1)(B), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3] P.L. 98-21, §132(b)(2)(A), redesignated paragraph (1) as subparagraph (A), effective with respect to monthly benefits for months after December 1984.

[4] P.L.98-21, §309(h), inserted "divorced husband,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5] P.L. 95-216, §302(a), struck out "seventy-two" and substituted "seventy", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

202 on the basis of the wages and self-employment income of such individual referred to in subparagraph (A) shall be determined as if no such divorced spouse were entitled to benefits for such month.[1]

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled, or from any mother's or father's[2] insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or mother's or father's[3] insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's or father's[4] insurance benefits is married to an individual who is entitled to old-age insurance benefits and on seven or more different calendar days of which such individual engaged in noncovered remunerative activity outside the United States.

Occurrence of More Than One Event

(e) If more than one of the events specified in subsections (c) and (d) and section 222(b) occurs in any one month which would occasion deductions equal to a benefit for such month, only an amount equal to such benefit shall be deducted.

Months to Which Earnings Are Charged

(f) For purposes of subsection (b)—

(1) The amount of an individual's excess earnings (as defined in paragraph (3)) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons (excluding divorced spouses referred to in subsection (b)(2))[5] are entitled for such month under section 202 on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all such[6] other persons are entitled for such month under section 202 on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 202(a) and other persons (excluding divorced spouses referred to in subsection (b)(2))[7] are entitled to benefits under section 202(b), (c), or (d) on the basis of the wages and self-employment income of such individual, the excess earnings of

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[1] P.L. 98-21, §132(b)(2)(B), added subparagraph (B), effective with respect to monthly benefits for months after December 1984.

[2] P.L. 98-21, §309(h), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §309(h), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] P.L. 98-21, §309(h), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5] P.L. 98-21, §132(b)(1)(B)(i)(I), inserted "(excluding divorced spouses referred to in subsection (b)(2))", effective with respect to monthly benefits for months after December 1984.

[6] P.L. 98-21, §132(b)(1)(B)(i)(I), inserted "such", effective with respect to monthly benefits for months after December 1984.

[7] P.L. 98-21, §132(b)(1)(B)(i)(II), inserted "(excluding divorced spouses referred to in subsection (b)(2))", effective with respect to monthly benefits for months after December 1984.

such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 202(s), no part of the excess earnings of an individual shall be charged to any month (A) for which such individual was not entitled to a benefit under this title, (B) in which such individual was age seventy[1] or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained retirement age (as defined in section 216(l))[2] (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained retirement age (as defined in section 216(l))[3] (but only if he became so entitled prior to attaining age 60), (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month after December 1977 that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 202 (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8), or (F) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), in the case of an individual entitled to benefits under section 202(b) or (c) (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c), as may be applicable)[4] or under section 202(d) or (g), if such month is in a year in which such entitlement ends for a reason other than the death of such individual, and such individual is not entitled to any benefits under this title for the month following the month during which such entitlement under section 202(b), (d), or (g) ended.

(2) As used in paragraph (1), the term "first month of such taxable year" means the earliest month in such year to which the charging of excess earnings described in such paragraph is

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[1] P.L. 95-216, §302(a), struck out "seventy-two" and substituted "seventy", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

[2] P.L. 98-21, §201(c)(1)(B), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3] P.L. 98-21, §201(c)(1)(B), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[4] P.L. 98-21, §306(i), struck out "(but only by reason of having a child in her care within the meaning of paragraph (1)(B) of that subsection)" and substituted "or (c) (but only by reason of having a child in his or her care within the meaning of paragraph (1)(B) of subsection (b) or (c), as may be applicable)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

not prohibited by the application of clauses (A), (B), (C), (D), (E), and (F) thereof.

(3) For purposes of paragraph (1) and subsection (h), an individual's excess earnings for a taxable year shall be 33⅓ percent[1] of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8) in the case of an individual who has attained retirement age (as defined in section 216(l)) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual[2], multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains age 70[3], there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Secretary). The excess earnings as derived under the preceding sentence, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

(A) An individual will be presumed, with respect to any month, to have been engaged in self-employment in such month until it is shown to the satisfaction of the Secretary that such individual rendered no substantial services in such month with respect to any trade or business the net income or loss of which is includible in computing (as provided in paragraph (5) of this subsection) his net earnings or net loss from self-employment for any taxable year. The Secretary shall by regulations prescribe the methods and criteria for determining whether or not an individual has rendered substantial services with respect to any trade or business.

(B) An individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Secretary that such individual did not render such services in such month for more than such amount.

(5)(A) An individual's earnings for a taxable year shall be (i) the sum of his wages for services rendered in such year and his net earnings from self-employment for such year, minus (ii) any net loss from self-employment for such year.

(B) For purposes of this section—

(i) an individual's net earnings from self-employment for any taxable year shall be determined as provided in section

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[1]P.L. 98-21, §347(a), struck out "50 per centum" and substituted "33⅓ percent", effective only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in §216(l) of the Act).

[2]P.L. 98-21, §347(a), inserted "in the case of an individual who has attained retirement age (as defined in section 216(l)) before the close of such taxable year, or 50 percent of his earnings for such year in excess of such product in the case of any other individual", effective only with respect to taxable years beginning after December 1989, and only in the case of individuals who have attained retirement age (as defined in §216(l) of the Act).

[3]P.L. 95-216, §302(b), struck out "72" and substituted "70", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

211, except that paragraphs (1), (4), and (5) of section 211(c) shall not apply and the gross income shall be computed by excluding the amounts provided by subparagraph (D), and

(ii) an individual's net loss from self-employment for any taxable year is the excess of the deductions (plus his distributive share of loss described in section 702(a)(9)[1] of the Internal Revenue Code of 1954[2]) taken into account under clause (i) over the gross income (plus his distributive share of income so described) taken into account under clause (i).

(C) For purposes of this subsection, an individual's wages shall be computed without regard to the limitations as to amounts of remuneration specified in subsections (a), (g)(2), (g)(3), (h)(2), and (j) of section 209; and in making such computation services which do not constitute employment as defined in section 210, performed within the United States by the individual as an employee or performed outside the United States in the active military or naval service of the United States, shall be deemed to be employment as so defined if the remuneration for such services is not includible in computing his net earnings or net loss from self-employment. The term "wages" does not include—

(i) the amount of any payment made to, or on behalf of, an employee or any of his dependents (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement, or

(ii) any payment or series of payments by an employer to an employee or any of his dependents upon or after the termination of the employee's employment relationship because of retirement after attaining an age specified in a plan referred to in section 209(m)(2) or in a pension plan of the employer.[3]

(D) In the case of—

(i) an individual who has attained the retirement age (as defined in section 216(l))[4] on or before the last day of the taxable year, and who shows to the satisfaction of the Secretary that he or she is receiving royalties attributable to a copyright or patent obtained before the taxable year in which he or she attained such age and that the property to which the copyright or patent relates was created by his or her own personal efforts, or

(ii) an individual who has become entitled to insurance benefits under this title, other than benefits under section 223 or benefits payable under section 202(d) by reason of being under a disability, and who shows to the satisfaction of the Secretary that he or she is receiving, in a year after his or her initial year of entitlement to such benefits, any other income not attributable to services performed after the month in which he or she initially became entitled to such

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[1] As in original. Should be "702(a)(8)".
See redesignation made by P.L. 94-455, §1901(b)(1)(I)(i), 90 Stat. 1791.
[2] P.L. 83-591.
[3] P.L. 98-21, §324(c)(4), added the preceding sentence. For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.
[4] P.L. 98-21, §201(c)(1)(B), struck out "age of 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

benefits,

there shall be excluded from gross income any such royalties or other income.

(6) For purposes of this subsection, wages (determined as provided in paragraph (5)(C)) which, according to reports received by the Secretary, are paid to an individual during a taxable year shall be presumed to have been paid to him for services performed in such year until it is shown to the satisfaction of the Secretary that they were paid for services performed in another taxable year. If such reports with respect to an individual show his wages for a calendar year, such individual's taxable year shall be presumed to be a calendar year for purposes of this subsection until it is shown to the satisfaction of the Secretary that his taxable year is not a calendar year.

(7) Where an individual's excess earnings are charged to a month and the excess earnings so charged are less than the total of the payments (without regard to such charging) to which all persons (excluding divorced spouses referred to in subsection (b)(2))[1] are entitled under section 202 for such month on the basis of his wages and self-employment income, the difference between such total and the excess so charged to such month shall be paid (if it is otherwise payable under this title) to such individual and other persons in the proportion that the benefit to which each of them is entitled (without regard to such charging, without the application of section 202(k)(3), and prior to the application of section 203(a)) bears to the total of the benefits to which all of them are entitled.

(8)(A) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the month of December[2] following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

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[1] P.L. 98-21, §132(b)(1)(B)(ii), inserted "(excluding divorced spouses referred to in subsection (b)(2))", effective with respect to monthly benefits for months after December 1984.

[2] P.L. 98-21, §111(a)(4), struck out "June" and substituted "December", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.[1]

Whenever the Secretary determines that an exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 215(i)(1)(A)) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

(C) Notwithstanding the determination of a new exempt amount by the Secretary under subparagraph (A) (and notwithstanding any publication thereof under such subparagraph or any notification thereof under the last sentence of subparagraph (B)), such new exempt amount shall not take effect pursuant thereto if during the calendar year in which such determination is made a law increasing the exempt amount is enacted.

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained retirement age (as defined in section 216(l))[2] before the close of the taxable year involved—

(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

[1]Retirement test exempt amounts for persons under age 65 are:

Year	Amount		Federal Register Citation	Publication Date
	Monthly	Annual		
1977	$250	$3,000	41 FR 44876	Oct. 13, 1976.
1978	270	3,240	42 FR 57754	Nov. 4, 1977.
1979	290	3,480	43 FR 53504	Nov. 16, 1978.
1980	310	3,720	44 FR 62957	Nov. 1, 1979.
1981	340	4,080	45 FR 76253	Nov. 18, 1980.
1982	370	4,440	46 FR 53792	Oct. 30, 1981.
1983	410	4,920	47 FR 51003	Nov. 10, 1982.
1984	430	5,160	48 FR 50415	Nov. 1, 1983.

[2]P.L. 98-21, §201(c)(1)(B), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.[1]

Penalty for Failure To Report Certain Events

(g) Any individual in receipt of benefits subject to deduction under subsection (c), (or who is in receipt of such benefits on behalf of another individual), because of the occurrence of an event specified therein, who fails to report such occurrence to the Secretary prior to the receipt and acceptance of an insurance benefit for the second month following the month in which such event occurred, shall suffer deductions in addition to those imposed under subsection (c) as follows:

(1) if such failure is the first one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than one month;

(2) if such failure is the second one with respect to which an additional deduction is imposed by this subsection, such additional deduction shall be equal to two times his benefit or benefits for the first month of the period for which there is a failure to report even though such failure is with respect to more than two months; and

(3) if such failure is the third or a subsequent one for which an additional deduction is imposed under this subsection, such additional deduction shall be equal to three times his benefit or benefits for the first month of the period for which there is a failure to report even though the failure to report is with respect to more than three months;

except that the number of additional deductions required by this subsection shall not exceed the number of months in the period for which there is a failure to report. As used in this subsection, the term "period for which there is a failure to report" with respect to any individual means the period for which such individual received and accepted insurance benefits under section 202 without making a timely report and for which deductions are required under subsection (c).

Report of Earnings to Secretary

(h)(1)(A) If an individual is entitled to any monthly insurance benefit under section 202 during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f), in excess of the product of the applicable exempt amount as determined under subsection (f)(8) times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the

[1] 1983 $550, [$6,600] 47 FR 51003; November 10, 1982.
1984 $580, [$6,960] 48 FR 50415; November 1, 1983.

month in which such individual attained age 70[1], or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 70[2] have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid reason for a delay, but in no case may the period be extended more than three months.

(B) If the benefit payments of an individual have been suspended for all months in any taxable year under the provisions of the first sentence of paragraph (3) of this subsection, no benefit payment shall be made to such individual for any such month in such taxable year after the expiration of the period of three years, three months, and fifteen days following the close of such taxable year unless within such period the individual, or some other person entitled to benefits under this title on the basis of the same wages and self-employment income, files with the Secretary information showing that a benefit for such month is payable to such individual.

(2) If an individual fails to make a report required under paragraph (1), within the time prescribed by or in accordance with such paragraph, for any taxable year and any deduction is imposed under subsection (b) by reason of his earnings for such year, he shall suffer additional deductions as follows:

(A) if such failure is the first one with respect to which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202, except that if the deduction imposed under subsection (b) by reason of his earnings for such year is less than the amount of his benefit (or benefits) for the last month of such year for which he was entitled to a benefit under section 202, the additional deduction shall be equal to the amount of the deduction imposed under subsection (b) but not less than $10;

(B) if such failure is the second one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to two times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

(C) if such failure is the third or a subsequent one for which an additional deduction is imposed under this paragraph, such additional deduction shall be equal to three times his benefit or benefits for the last month of such year for which he was entitled to a benefit under section 202;

except that the number of the additional deductions required by this paragraph with respect to a failure to report earnings for a taxable year shall not exceed the number of months in such year for which such individual received and accepted insurance benefits under section 202 and for which deductions are imposed under subsection

[1]P.L. 95-216, §302(c), struck out "the age of 72" and substituted "age 70", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

[2]P.L. 95-216, §302(c), struck out "72" and substituted "70", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

(b) by reason of his earnings. In determining whether a failure to report earnings is the first or a subsequent failure for any individual, all taxable years ending prior to the imposition of the first additional deduction under this paragraph, other than the latest one of such years, shall be disregarded.

(3) If the Secretary determines, on the basis of information obtained by or submitted to him, that it may reasonably be expected that an individual entitled to benefits under section 202 for any taxable year will suffer deductions imposed under subsection (b) by reason of his earnings for such year, the Secretary may, before the close of such taxable year, suspend the total or less than the total payment for each month in such year (or for only such months as the Secretary may specify) of the benefits payable on the basis of such individual's wages and self-employment income; and such suspension shall remain in effect with respect to the benefits for any month until the Secretary has determined whether or not any deduction is imposed for such month under subsection (b). The Secretary is authorized, before the close of the taxable year of an individual entitled to benefits during such year, to request of such individual that he make, at such time or times as the Secretary may specify, a declaration of his estimated earnings for the taxable year and that he furnish to the Secretary such other information with respect to such earnings as the Secretary may specify. A failure by such individual to comply with any such request shall in itself constitute justification for a determination under this paragraph that it may reasonably be expected that the individual will suffer deductions imposed under subsection (b) by reason of his earnings for such year. If, after the close of a taxable year of an individual entitled to benefits under section 202 for such year, the Secretary requests such individual to furnish a report of his earnings (as computed pursuant to paragraph (5) of subsection (f)) for such taxable year or any other information with respect to such earnings which the Secretary may specify, and the individual fails to comply with such request, such failure shall in itself constitute justification for a determination that such individual's benefits are subject to deductions under subsection (b) for each month in such taxable year (or only for such months thereof as the Secretary may specify) by reason of his earnings for such year.

Circumstances Under Which Deductions Not Required

(i) In the case of any individual, deductions by reason of the provisions of subsection (b), (c), (g), or (h) of this section, or the provisions of section 222(b), shall, notwithstanding such provisions, be made from the benefits to which such individual is entitled only to the extent that such deductions reduce the total amount which would otherwise be paid, on the basis of the same wages and self-employment income, to such individual and the other individuals living in the same household.

Attainment of Age Seventy[1]

(j) For the purposes of this section, an individual shall be considered as seventy[2] years of age during the entire month in which he attains such age.

Noncovered Remunerative Activity Outside the United States

(k) An individual shall be considered to be engaged in noncovered remunerative activity outside the United States if he performs services outside the United States as an employee and such services do not constitute employment as defined in section 210 and are not performed in the active military or naval service of the United States, or if he carries on a trade or business outside the United States (other than the performance of service as an employee) the net income or loss of which (1) is not includible in computing his net earnings from self-employment for a taxable year and (2) would not be excluded from net earnings from self-employment, if carried on in the United States, by any of the numbered paragraphs of section 211(a). When used in the preceding sentence with respect to a trade or business (other than the performance of service as an employee), the term "United States" does not include the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa in the case of an alien who is not a resident of the United States (including the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa); and the term "trade or business" shall have the same meaning as when used in section 162 of the Internal Revenue Code of 1954[3].

Good Cause for Failure To Make Reports Required

(l) The failure of an individual to make any report required by subsection (g) or (h)(1)(A) within the time prescribed therein shall not be regarded as such a failure if it is shown to the satisfaction of the Secretary that he had good cause for failing to make such report within such time. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

OVERPAYMENTS AND UNDERPAYMENTS[4]

SEC. 204. [42 U.S.C. 404] (a) Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this title, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

(1) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this title to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this title payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply

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[1] P.L. 95-216, §302(d), struck out "Seventy-two" and substituted "Seventy", effective with respect to taxable years ending after December 31, 1981.

See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2204, with respect to a temporary extension of the earnings limitation to include all persons aged less than 72.

[2] P.L. 95-216, §302(a), struck out "seventy-two" and substituted "seventy", effective with respect to taxable years ending after December 31, 1981.

[3] P.L. 83-591.

[4] See §1870 with respect to adjustment of Title XVIII overpayments against payment of benefits under Title II.

any combination of the foregoing. A payment made under this title on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 210(m)) on active duty (as defined in section 210(l)) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive.

(2) With respect to payment to a person of less than the correct amount, the Secretary shall make payment of the balance of the amount due such underpaid person, or, if such person dies before payments are completed or before negotiating one or more checks representing correct payments, disposition of the amount due shall be made in accordance with subsection (d).

(b) In any case in which more than the correct amount of payment has been made, there shall be no adjustment of payments to, or recovery by the United States from, any person who is without fault if such adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

(c) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any person where the adjustment or recovery of such amount is waived under subsection (b), or where adjustment under subsection (a) is not completed prior to the death of all persons against whose benefits deductions are authorized.

(d) If an individual dies before any payment due him under this title is completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who either (i) was living in the same household with the deceased at the time of his death or (ii) was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(2) if there is no person who meets the requirements of paragraph (1), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such

requirements dies before the payment due him under this title is completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representative of the estate of the deceased individual, if any.

(e) For payments which are adjusted by reason of payment of benefits under the supplemental security income program established by title XVI, see section 1127.[1]

EVIDENCE, PROCEDURE, AND CERTIFICATION FOR PAYMENT[2]

SEC. 205. [42 U.S.C. 405] (a) The Secretary shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this title, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

(b)(1)[3] The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for a payment under this title. Any such decision by the Secretary which involves a

[1] P.L. 96-265, §501(b), added subsection (e), effective with respect to payments of monthly insurance benefits under Title II of the Act entitlement for which is determined on or after July 1, 1981.

[2] P.L. 94-202, legislative history [94th Cong., 1st Sess., House Report 94-679, dated November 20, 1975, pp. 3-5, and Senate Report 94-550, dated December 12, 1975, pp. 4-6], discusses applicability of 5 U.S.C. 551 et seq. [Administrative Procedure Act] to Social Security Administration hearings.

P.L. 95-251, §2(a), amended the Administrative Procedure Act by striking out "hearing examiner" and substituting "administrative law judge", effective March 27, 1978.

See P.L. 84-885, "State Department Basic Authorities Act of 1956", §33, with respect to evidence of United States citizenship.

See P.L. 90-321, "Consumer Credit Protection Act", §913(2), with respect to electronic fund transfers.

See P.L. 94-437, "Indian Health Care Improvement Act", §702, with respect to regulations applicable to Indians.

See P.L. 95-630, "Financial Institutions Regulatory and Interest Rate Control Act of 1978", §§1101-1121, with respect to an individual's right to financial privacy.

See P.L. 97-455, [Temporary Payment of Disability Benefits], §5, with respect to conduct of face-to-face reconsiderations in disability cases.

[3] P.L. 97-455, §4(a)(1), redesignated subsection (b) as paragraph (1), effective with respect to reconsiderations (of findings described in §205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence, and stating the Secretary's determination and the reason or reasons upon which it is based.[1] Upon request by any such individual or upon request by a wife, divorced wife, widow, surviving divorced wife, surviving divorced mother, surviving divorced father,[2] husband, divorced husband,[3] widower, surviving divorced husband,[4] child, or parent who makes a showing in writing that his or her rights may be prejudiced by any decision the Secretary has rendered, he shall give such applicant and such other individual reasonable notice and opportunity for a hearing with respect to such decision, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his findings of fact and such decision. Any such request with respect to such a decision must be filed within sixty days after notice of such decision is received by the individual making such request. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under rules of evidence applicable to court procedure.

(2) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and

(C) as a consequence of the finding described in subparagraph (B), such individual is determined by the Secretary not to be entitled to such benefits,

any reconsideration of the finding described in subparagraph (B), in connection with a reconsideration by the Secretary (before any hearing under paragraph (1) on the issue of such entitlement) of his determination described in subparagraph (C), shall be made only after opportunity for an evidentiary hearing, with regard to the finding described in subparagraph (B), which is reasonably accessible to such individual. Any reconsideration of a finding described in subparagraph (B) may be made either by the State agency or the Secretary where the finding was originally made by the State agency, and shall be made by the Secretary where the finding was originally made by the Secretary. In the case of a reconsideration by a State agency of a finding described in subparagraph (B) which was originally made by such State agency, the evidentiary hearing shall be held by an adjudicatory unit of the State agency other than the unit that

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[1] P.L. 96-265, §305(a), added the preceding sentence, effective with respect to decisions made on or after July 1, 1981.

[2] P.L. 98-21, §309(i)(1), inserted "surviving divorced father,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §301(d)(1), inserted "divorced husband,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] P.L. 98-21, §301(d)(1), inserted "surviving divorced husband,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

made the finding described in subparagraph (B). In the case of a reconsideration by the Secretary of a finding described in subparagraph (B) which was originally made by the Secretary, the evidentiary hearing shall be held by a person other than the person or persons who made the finding described in subparagraph (B).[1]

(c)(1) For the purposes of this subsection—

(A) The term "year" means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

(B) The term "time limitation" means a period of three years, three months, and fifteen days.

(C) The term "survivor" means an individual's spouse, surviving divorced wife, surviving divorced husband,[2] surviving divorced mother, surviving divorced father,[3] child, or parent, who survives such individual.

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1954[4] or regulations thereunder (or on reports filed by a State under section 218(e) or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

(2)(A) On the basis of information obtained by or submitted to the Secretary, and after such verification thereof as he deems necessary, the Secretary shall establish and maintain records of the amounts of wages paid to, and the amounts of self-employment income derived by, each individual and of the periods in which such wages were paid and such income was derived and, upon request, shall inform any individual or his survivor, or the legal representative of such individual or his estate, of the amounts of wages and self-employment income of such individual and the periods during which such wages were paid and such income was derived, as shown by such records at the time of such request.

(B)(i) In carrying out his duties under subparagraph (A), the Secretary shall take affirmative measures to assure that social security account numbers will, to the maximum extent practicable, be assigned to all members of appropriate groups or categories of individuals by assigning such numbers (or ascertaining that such numbers have already been assigned):

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[1] P.L. 97-455, §4(a)(2), added paragraph (2), effective with respect to reconsiderations (of findings described in §205(b)(2)(B) of the Social Security Act) which are requested on or after such date as the Secretary of Health and Human Services may specify, but in any event not later than January 1, 1984.

[2] P.L. 98-21, §301(d)(2), inserted "surviving divorced husband,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §309(i)(2), inserted "surviving divorced father,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] P.L. 83-591.

(I) to aliens at the time of their lawful admission to the United States either for permanent residence or under other authority of law permitting them to engage in employment in the United States and to other aliens at such time as their status is so changed as to make it lawful for them to engage in such employment;

(II) to any individual who is an applicant for or recipient of benefits under any program financed in whole or in part from Federal funds including any child on whose behalf such benefits are claimed by another person; and

(III) to any other individual when it appears that he could have been but was not assigned an account number under the provisions of subclauses (I) or (II) but only after such investigation as is necessary to establish to the satisfaction of the Secretary, the identity of such individual, the fact that an account number has not already been assigned to such individual, and the fact that such individual is a citizen or a noncitizen who is not, because of his alien status, prohibited from engaging in employment;

and, in carrying out such duties, the Secretary is authorized to take affirmative measures to assure the issuance of social security numbers:

(IV) to or on behalf of children who are below school age at the request of their parents or guardians; and

(V) to children of school age at the time of their first enrollment in school.

(ii) The Secretary shall require of applicants for social security account numbers such evidence as may be necessary to establish the age, citizenship, or alien status, and true identity of such applicants, and to determine which (if any) social security account number has previously been assigned to such individual.

(iii) In carrying out the requirements of this subparagraph, the Secretary shall enter into such agreements as may be necessary with the Attorney General and other officials and with State and local welfare agencies and school authorities (including non-public[1] school authorities).

(C)(i) It is the policy of the United States that any State (or political subdivision thereof) may, in the administration of any tax, general public assistance, driver's license, or motor vehicle registration law within its jurisdiction, utilize the social security account numbers issued by the Secretary for the purpose of establishing the identification of individuals affected by such law, and may require any individual who is or appears to be so affected to furnish to such State (or political subdivision thereof) or any agency thereof having administrative responsibility for the law involved, the social security account number (or numbers, if he has more than one such number) issued to him by the Secretary.[2]

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[1] As in original.

[2] See P.L. 80-759, "Military Selective Service Act", §12(e), with respect to disclosure of the social security number for individuals required to submit to registration.

See P.L. 83-591, "Internal Revenue Code of 1954", §6109, with respect to use of a social security number as a "taxpayer identifying number" as that term is used in the "Debt Collection Act of 1982" [P.L. 97-365].

See P.L. 88-525, "Food Stamp Act of 1977", §16(e), with respect to use of the social security number for participation in the food stamp program.

(ii) If and to the extent that any provision of Federal law heretofore enacted is inconsistent with the policy set forth in clause (i) of this subparagraph, such provision shall, on and after the date of the enactment of this subparagraph[1], be null, void, and of no effect.

(iii) For purposes of clause (i) of this subparagraph, an agency of a State (or political subdivision thereof) charged with the administration of any general public assistance, driver's license, or motor vehicle registration law which did not use the social security account number for identification under a law or regulation adopted before January 1, 1975, may require an individual to disclose his or her social security number to such agency solely for the purpose of administering the laws referred to in clause (i) above and for the purpose of responding to requests for information from an agency operating pursuant to the provisions of part A or D of title IV of the Social Security Act.

(iv) For purposes of this subparagraph, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Marianas, and the Trust Territory of the Pacific Islands.

(D) The Secretary shall issue a social security card to each individual at the time of the issuance of a social security account number to such individual. The social security card shall be made of banknote paper, and (to the maximum extent practicable) shall be a card which cannot be counterfeited.[2]

(3) The Secretary's record shall be evidence for the purpose of proceedings before the Secretary or any court of the amounts of wages paid to, and self-employment income derived by, an individual and of the periods in which such wages were paid and such income was derived. The absence of an entry in such records as to wages alleged to have been paid to, or as to self-employment income alleged to have been derived by, an individual in any period shall be evidence that no such alleged wages were paid to, or that no such alleged income was derived by, such individual during such period.

(4) Prior to the expiration of the time limitation following any year the Secretary may, if it is brought to his attention that any entry of wages or self-employment income in his records for such year is erroneous or that any item of wages or self-employment income for such year has been omitted from such records, correct such entry or include such omitted item in his records, as the case may be. After the expiration of the time limitation following any year—

(A) the Secretary's records (with changes, if any, made pursuant to paragraph (5)) of the amounts of wages paid to, and self-employment income derived by, an individual during any period in such year shall be conclusive for the purposes of this title;

(B) the absence of an entry in the Secretary's records as to the wages alleged to have been paid by an employer to an individual during any period in such year shall be presumptive evidence for the purposes of this title that no such alleged wages were paid to such individual in such period; and

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[1]October 4, 1976 [P.L. 94-455, §1211(b); 90 Stat. 1711].

[2]P.L. 98-21, §345(a), added subparagraph (D), effective with respect to all new and replacement social security cards issued on or after October 31, 1983.

See P.L. 98-21, "Social Security Amendments of 1983", §345(c), with respect to the Secretary's report to Congress on the implementation of this subparagraph.

(C) the absence of an entry in the Secretary's records as to the self-employment income alleged to have been derived by an individual in such year shall be conclusive for the purposes of this title that no such alleged self-employment income was derived by such individual in such year unless it is shown that he filed a tax return of his self-employment income for such year before the expiration of the time limitation following such year, in which case the Secretary shall include in his records the self-employment income of such individual for such year.

(5) After the expiration of the time limitation following any year in which wages were paid or alleged to have been paid to, or self-employment income was derived or alleged to have been derived by, an individual, the Secretary may change or delete any entry with respect to wages or self-employment income in his records of such year for such individual or include in his records of such year for such individual any omitted item of wages or self-employment income but only—

(A) if an application for monthly benefits or for a lump-sum death payment was filed within the time limitation following such year; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon the application for monthly benefits or lump-sum death payment;

(B) if within the time limitation following such year an individual or his survivor makes a request for a change or deletion, or for an inclusion of an omitted item, and alleges in writing that the Secretary's records of the wages paid to, or the self-employment income derived by, such individual in such year are in one or more respects erroneous; except that no such change, deletion, or inclusion may be made pursuant to this subparagraph after a final decision upon such request. Written notice of the Secretary's decision on any such request shall be given to the individual who made the request;

(C) to correct errors apparent on the face of such records;

(D) to transfer items to records of the Railroad Retirement Board if such items were credited under this title when they should have been credited under the Railroad Retirement Act, or to enter items transferred by the Railroad Retirement Board which have been credited under the Railroad Retirement Act when they should have been credited under this title;

(E) to delete or reduce the amount of any entry which is erroneous as a result of fraud;

(F) to conform his records to—

(i) tax returns or portions thereof (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act, under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code of 1939[1], under chapter 2 or 21 of the Internal Revenue Code of 1954[2], or under regulations made under authority of such title, subchapter, or chapter;

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[1]P.L. 76-1.

[2]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 2, p. 803.

(ii) wage reports filed by a State pursuant to an agreement under section 218 or regulations of the Secretary thereunder; or

(iii) assessments of amounts due under an agreement pursuant to section 218, if such assessments are made within the period specified in subsection (q) of such section, or allowances of credits or refunds of overpayments by a State under an agreement pursuant to such section;

except that no amount of self-employment income of an individual for any taxable year (if such return or statement was filed after the expiration of the time limitation following the taxable year) shall be included in the Secretary's records pursuant to this subparagraph;

(G) to correct errors made in the allocation, to individuals or periods, of wages or self-employment income entered in the records of the Secretary;

(H) to include wages paid during any period in such year to an individual by an employer if there is an absence of an entry in the Secretary's records of wages having been paid by such employer to such individual in such period;

(I) to enter items which constitute remuneration for employment under subsection (o), such entries to be in accordance with certified reports of records made by the Railroad Retirement Board pursuant to section 5(k)(3) of the Railroad Retirement Act of 1937[1]; or

(J) to include self-employment income for any taxable year, up to, but not in excess of, the amount of wages deleted by the Secretary as payments erroneously included in such records as wages paid to such individual, if such income (or net earnings from self-employment), not already included in such records as self-employment income, is included in a return or statement (referred to in subparagraph (F)) filed before the expiration of the time limitation following the taxable year in which such deletion of wages is made.

(6) Written notice of any deletion or reduction under paragraph (4) or (5) shall be given to the individual whose record is involved or to his survivor, except that (A) in the case of a deletion or reduction with respect to any entry of wages such notice shall be given to such individual only if he has previously been notified by the Secretary of the amount of his wages for the period involved, and (B) such notice shall be given to such survivor only if he or the individual whose record is involved has previously been notified by the Secretary of the amount of such individual's wages and self-employment income for the period involved.

(7) Upon request in writing (within such period, after any change or refusal of a request for a change of his records pursuant to this subsection, as the Secretary may prescribe), opportunity for hearing with respect to such change or refusal shall be afforded to any individual or his survivor. If a hearing is held pursuant to this paragraph the Secretary shall make findings of fact and a decision based upon the evidence adduced at such hearing and shall include any omitted items, or change or delete any entry, in his records as may be required by such findings and decision.

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[1] In general, §7(b)(7) of P.L. 75-162, "Railroad Retirement Act of 1974" [as amended by P.L. 93-445] replaces §5(k)(3) of the Railroad Retirement Act of 1937.

(8) Decisions of the Secretary under this subsection shall be reviewable by commencing a civil action in the United States district court as provided in subsection (g).

(d) For the purpose of any hearing, investigation, or other proceeding authorized or directed under this title, or relative to any other matter within his jurisdiction hereunder, the Secretary shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the Secretary. Such attendance of witnesses and production of evidence at the designated place of such hearing, investigation, or other proceeding may be required from any place in the United States or in any Territory or possession thereof. Subpenas of the Secretary shall be served by anyone authorized by him (1) by delivering a copy thereof to the individual named therein, or (2) by registered mail or by certified mail addressed to such individual at his last dwelling place or principal place of business. A verified return by the individual so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post-office receipt therefor signed by the individual so served, shall be proof of service. Witnesses so subpenaed shall be paid the same fees and mileage as are paid witnesses in the district courts of the United States.

(e) In case of contumacy by, or refusal to obey a subpena duly served upon, any person, any district court of the United States for the judicial district in which said person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Secretary, shall have jurisdiction to issue on[1] order requiring such person to appear and give testimony, or to appear and produce evidence, or both; any failure to obey such order of the court may be punished by said court as contempt thereof.

[(f) Repealed.[2]]

(g) Any individual, after any final decision of the Secretary made after a hearing to which he was a party, irrespective of the amount in controversy, may obtain a review of such decision by a civil action commenced within sixty days after the mailing to him of notice of such decision or within such further time as the Secretary may allow. Such action shall be brought in the district court of the United States for the judicial district in which the plaintiff resides, or has his principal place of business, or, if he does not reside or have his principal place of business within any such judicial district, in the United States District Court for the District of Columbia. As part of his answer the Secretary shall file a certified copy of the transcript of the record including the evidence upon which the findings and decision complained of are based. The court shall have power to enter, upon the pleadings and transcript of the record, a judgment affirming, modifying, or reversing the decision of the Secretary, with or without remanding the cause for a rehearing. The findings of the Secretary as to any fact, if supported by substantial evidence, shall be conclusive, and where a claim has been denied by the Secretary or a decision is rendered under subsection (b) hereof which is adverse to an individual who was a party to the hearing before the Secretary,

[1] As in original. Probably should be "an".
[2] P.L. 91-452, §236; 84 Stat. 930.

because of failure of the claimant or such individual to submit proof in conformity with any regulation prescribed under subsection (a) hereof, the court shall review only the question of conformity with such regulations and the validity of such regulations. The court may, on motion of the Secretary made for good cause shown before he files his answer, remand the case to the Secretary for further action by the Secretary, and it may at any time order additional evidence to be taken before the Secretary, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Secretary shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm his findings of fact or his decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which his action in modifying or affirming was based. Such additional or modified findings of fact and decision shall be reviewable only to the extent provided for review of the original findings of fact and decision. The judgment of the court shall be final except that it shall be subject to review in the same manner as a judgment in other civil actions. Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(h) The findings and decision of the Secretary after a hearing shall be binding upon all individuals who were parties to such hearing. No findings of fact or decision of the Secretary shall be reviewed by any person, tribunal, or governmental agency except as herein provided. No action against the United States, the Secretary, or any officer or employee thereof shall be brought under section 24 of the Judicial Code of the United States[1] to recover on any claim arising under this title.

(i) Upon final decision of the Secretary, or upon final judgment of any court of competent jurisdiction, that any person is entitled to any payment or payments under this title, the Secretary shall certify to the Managing Trustee the name and address of the person so entitled to receive such payment or payments, the amount of such payment or payments, and the time at which such payment or payments should be made, and the Managing Trustee, through the Division of Disbursement of the Treasury Department, and prior to any action thereon by the General Accounting Office, shall make payment in accordance with the certification of the Secretary (except that in the case of (A) an individual who will have completed ten years of service creditable under the Railroad Retirement Act of 1937 or the Railroad Retirement Act of 1974, (B) the wife or husband of such an individual, (C) any survivor of such an individual if such survivor is entitled, or could upon application become entitled, to an annuity under section 2 of the Railroad Retirement Act of 1974[2], and (D) any other person entitled to benefits under section 202 of this Act on the basis of the wages and self-employment income of such an individual (except a survivor of such an individual where such individual did not have a current connection with the railroad industry, as defined in the Railroad Retirement Act of 1974, at the

[1] See, instead, 28 U.S.C. 1331 or 1346.
[2] P.L. 75-162 [as amended by P.L. 93-445].

time of his death), such certification shall be made to the Railroad Retirement Board which shall provide for such payment or payments to such person on behalf of the Managing Trustee in accordance with the provisions of the Railroad Retirement Act of 1974): *Provided,* That where a review of the Secretary's decision is or may be sought under subsection (g) the Secretary may withhold certification of payment pending such review. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary.

(j) When it appears to the Secretary that the interest of an applicant entitled to a payment would be served thereby, certification of payment may be made, regardless of the legal competency or incompetency of the individual entitled thereto, either for direct payment to such applicant, or for his use and benefit to a relative or some other person.[1]

(k) Any payment made after December 31, 1939, under conditions set forth in subsection (j), any payment made before January 1, 1940, to, or on behalf of, a legally incompetent individual, and any payment made after December 31, 1939, to a legally incompetent individual without knowledge by the Secretary of incompetency prior to certification of payment, if otherwise valid under this title, shall be a complete settlement and satisfaction of any claim, right, or interest in and to such payment.

(l) The Secretary is authorized to delegate to any member, officer, or employee of the Department of Health, Education, and Welfare designated by him any of the powers conferred upon him by this section, and is authorized to be represented by his own attorneys in any court in any case or proceeding arising under the provisions of subsection (e).

[(m) Repealed.[2]]

(n) The Secretary may, in his discretion, certify to the Managing Trustee any two or more individuals of the same family for joint payment of the total benefits payable to such individuals for any month, and if one of such individuals dies before a check representing such joint payment is negotiated, payment of the amount of such unnegotiated check to the surviving individual or individuals may be authorized in accordance with regulations of the Secretary of the Treasury; except that appropriate adjustment or recovery shall be made under section 204(a) with respect to so much of the amount of such check as exceeds the amount to which such surviving individual or individuals are entitled under this title for such month.

Crediting of Compensation Under the Railroad Retirement Act

(o) If there is no person who would be entitled, upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974[3], or to a lump-sum payment under section 6(b) of such Act[4], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 210(a)(9) of this Act, compensation (as defined in such Railroad Retirement Act[5], but excluding

[1] See P.L. 95-608, "Indian Child Welfare Act of 1978", §§2-113, with respect to Indian children.
[2] P.L. 81-734, §101(b)(2); 64 Stat. 488. See, instead, §202(j)(2).
[3] P.L. 75-162 [as amended by P.L. 93-445].
[4] P.L. 75-162 [as amended by P.L. 93-445].
[5] P.L. 75-162 [as amended by P.L. 93-445].

compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act[1] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 217 of this Act) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this title on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this title, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

Special Rules in Case of Federal Service

(p)(1) With respect to service included as employment under section 210 which is performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service, performed as a member of a uniformed service, to which the provisions of subsection (l)(1) of such section are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act[2], to which the provisions of section 210(o) are applicable, the Secretary shall not make determinations as to whether an individual has performed such service, the periods of such service, the amounts of remuneration for such service which constitute wages under the provisions of section 209, or the periods in which or for which such wages were paid, but shall accept the determinations with respect thereto of the head of the appropriate Federal agency or instrumentality, and of such agents as such head may designate, as evidenced by returns filed in accordance with the provisions of section 1420(e) of the Internal Revenue Code[3] and certifications made pursuant to this subsection. Such determinations shall be final and conclusive.

(2) The head of any such agency or instrumentality is authorized and directed, upon written request of the Secretary, to make certification to him with respect to any matter determinable for the Secretary by such head or his agents under this subsection, which the Secretary finds necessary in administering this title.

(3) The provisions of paragraphs (1) and (2) shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) the Secretary of Defense

[1] P.L. 75-162 [as amended by P.L. 93-445].
[2] P.L. 87-293.
[3] As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", §3122, p. 838.

shall be deemed to be the head of such instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation shall be deemed to be the head of such instrumentality.

Expedited Benefit Payments

(q)(1) The Secretary shall establish and put into effect procedures under which expedited payment of monthly insurance benefits under this title will, subject to paragraph (4) of this subsection, be made as set forth in paragraphs (2) and (3) of this subsection.

(2) In any case in which—

(A) an individual makes an allegation that a monthly benefit under this title was due him in a particular month but was not paid to him, and

(B) such individual submits a written request for the payment of such benefit—

(i) in the case of an individual who received a regular monthly benefit in the month preceding the month with respect to which such allegation is made, not less than 30 days after the 15th day of the month with respect to which such allegation is made (and in the event that such request is submitted prior to the expiration of such 30-day period, it shall be deemed to have been submitted upon the expiration of such period), and

(ii) in any other case, not less than 90 days after the later of (I) the date on which such benefit is alleged to have been due, or (II) the date on which such individual furnished the last information requested by the Secretary (and such written request will be deemed to be filed on the day on which it was filed, or the ninetieth day after the first day on which the Secretary has evidence that such allegation is true, whichever is later),

the Secretary shall, if he finds that benefits are due, certify such benefits for payment, and payment shall be made within 15 days immediately following the date on which the written request is deemed to have been filed.

(3) In any case in which the Secretary determines that there is evidence, although additional evidence might be required for a final decision, that an allegation described in paragraph (2)(A) is true, he may make a preliminary certification of such benefit for payment even though the 30-day or 90-day periods described in paragraph (2)(B)(i) and (B)(ii) have not elapsed.

(4) Any payment made pursuant to a certification under paragraph (3) of this subsection shall not be considered an incorrect payment for purposes of determining the liability of the certifying or disbursing officer.

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(5) For purposes of this subsection, benefits payable under section 228 shall be treated as monthly insurance benefits payable under this title. However, this subsection shall not apply with respect to any benefit for which a check has been negotiated, or with respect to any benefit alleged to be due under either section 223, or section 202 to a wife, husband, or child of an individual entitled to or applying for benefits under section 223, or to a child who has attained age 18 and is under a disability, or to a widow or widower on the basis of being under a disability.

USE OF DEATH CERTIFICATES TO CORRECT PROGRAM INFORMATION[1]

(r)(1) The Secretary shall undertake to establish a program under which—

(A) States (or political subdivisions thereof) voluntarily contract with the Secretary to furnish the Secretary periodically with information (in a form established by the Secretary in consultation with the States) concerning individuals with respect to whom death certificates (or equivalent documents maintained by the States or subdivisions) have been officially filed with them; and

(B) there will be (i) a comparison of such information on such individuals with information on such individuals in the records being used in the administration of this Act, (ii) validation of the results of such comparisons, and (iii) corrections in such records to accurately reflect the status of such individuals.

(2) Each State (or political subdivision thereof) which furnishes the Secretary with information on records of deaths in the State or subdivision under this subsection may be paid by the Secretary from amounts available for administration of this Act the reasonable costs (established by the Secretary in consultations with the States) for transcribing and transmitting such information to the Secretary.

(3) In the case of individuals with respect to whom federally funded benefits are provided by (or through) a Federal or State agency other than under this Act, the Secretary shall to the extent feasible provide such information through a cooperative arrangement with such agency, for ensuring proper payment of those benefits with respect to such individuals if—

(A) under such arrangement the agency provides reimbursement to the Secretary for the reasonable cost of carrying out such arrangement, and

(B) such arrangement does not conflict with the duties of the Secretary under paragraph (1).

(4) The Secretary may enter into similar agreements with States to provide information for their use in programs wholly funded by the States if the requirements of (r)(3)(A) and (r)(3)(B) are met.

(5) The Secretary may use or provide for the use of such records as may be corrected under this section, subject to such safeguards as the Secretary determines are necessary or appropriate to protect the information from unauthorized use or disclosure, for statistical and research activities conducted by Federal and State agencies.

(6) Information furnished to the Secretary under this subsection may not be used for any purpose other than the purpose described in

[1]As in original. P.L. 98-21, §336, added subsection (r), effective April 20, 1983.

this subsection and is exempt from disclosure under section 552 of title 5, United States Code, and from the requirements of section 552a of such title.

(7) The Secretary shall include information on the status of the program established under this section and impediments to the effective implementation of the program in the 1984 report required under section 704 of the Act.

REPRESENTATION OF CLAIMANTS

SEC. 206. [42 U.S.C. 406] (a) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys as hereinafter provided, representing claimants before the Secretary, and may require of such agents or other persons, before being recognized as representatives of claimants that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any provision of this section for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Whenever the Secretary, in any claim before him for benefits under this title, makes a determination favorable to the claimant, he shall, if the claimant was represented by an attorney in connection with such claim, fix (in accordance with the regulations prescribed pursuant to the preceding sentence) a reasonable fee to compensate such attorney for the services performed by him in connection with such claim. If as a result of such determination, such claimant is entitled to past-due benefits under this title, the Secretary shall, notwithstanding section 205(i), certify for payment (out of such past-due benefits) to such attorney an amount equal to whichever of the following is the smaller: (A) 25 per centum of the total amount of such past-due benefits, (B) the amount of the attorney's fee so fixed, or (C) the amount agreed upon between the claimant and such attorney as the fee for such attorney's services. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

(b)(1) Whenever a court renders a judgment favorable to a claimant under this title who was represented before the court by an attorney, the court may determine and allow as part of its judgment a reasonable fee for such representation, not in excess of 25 percent of the total of the past-due benefits to which the claimant is entitled by reason of such judgment, and the Secretary may, notwithstanding the provisions of section 205(i), certify the amount of such fee for payment to such attorney out of, and not in addition to, the amount of such past-due benefits. In case of any such judgment, no other fee may be payable or certified for payment for such representation except as provided in this paragraph.

(2) Any attorney who charges, demands, receives, or collects for services rendered in connection with proceedings before a court to which paragraph (1) is applicable any amount in excess of that allowed by the court thereunder shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500, or imprisonment for not more than one year, or both.

ASSIGNMENT

SEC. 207. [42 U.S.C. 407] (a)[1] The right of any person to any future payment under this title shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) No other provision of law, enacted before, on, or after the date of the enactment of this section[2], may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.[3]

PENALTIES[4]

SEC. 208. [42 U.S.C. 408] Whoever—

(a) for the purpose of causing an increase in any payment authorized to be made under this title, or for the purpose of causing any payment to be made where no payment is authorized under this title, shall make or cause to be made any false statement or representation (including any false statement or representation in connection with any matter arising under subchapter E of chapter 1, or subchapter A or E of chapter 9 of the Internal Revenue Code of 1939[5], or chapter 2 or 21 or subtitle F of the Internal Revenue Code of 1954[6]) as to—

(1) whether wages were paid or received for employment (as said terms are defined in this title and the Internal Revenue Code), or the amount of wages or the period during which paid or the person to whom paid; or

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[1] P.L. 98-21, §335(a)(1), inserted "(a)", effective only with respect to benefits payable or rights existing under the Act on or after April 20, 1983.

[2] This section was enacted August 10, 1939, [P.L. 76-379 §207].
This subsection was enacted April 20, 1983, [P.L. 98-21, §335(a)(2)].

[3] P.L. 98-21, §335(a)(2), added subsection (b), effective only with respect to benefits payable or rights existing under the Act on or after April 20, 1983.

[4] See 18 U.S.C. 1028 and 1738 with respect to penalties relating to use of identification documents.

[5] P.L. 76-1.

[6] See P.L. 83-591, "Internal Revenue Code of 1954", chapter 2, p. 803.

(2) whether net earnings from self-employment (as such term is defined in this title and in the Internal Revenue Code) were derived, or as to the amount of such net earnings or the period during which or the person by whom derived; or

(3) whether a person entitled to benefits under this title had earnings in or for a particular period (as determined under section 203(f) of this title for purposes of deductions from benefits), or as to the amount thereof; or

(b) makes or causes to be made any false statement or representation of a material fact in any application for any payment or for a disability determination under this title; or

(c) at any time makes or causes to be made any false statement or representation of a material fact for use in determining rights to payment under this title; or

(d) having knowledge of the occurrence of any event affecting (1) his initial or continued right to any payment under this title, or (2) the initial or continued right to any payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure payment either in a greater amount than is due or when no payment is authorized; or

(e) having made application to receive payment under this title for the use and benefit of another and having received such a payment, knowingly and willfully converts such a payment, or any part thereof, to a use other than for the use and benefit of such other person; or

(f) willfully, knowingly, and with intent to deceive the Secretary as to his true identity (or the true identity of any other person) furnishes or causes to be furnished false information to the Secretary with respect to any information required by the Secretary in connection with the establishment and maintenance of the records provided for in section 205(c)(2); or

(g) for the purpose of causing an increase in any payment authorized under this title (or any other program financed in whole or in part from Federal funds), or for the purpose of causing a payment under this title (or any such other program) to be made when no payment is authorized thereunder, or for the purpose of obtaining (for himself or any other person) any payment or any other benefit to which he (or such other person) is not entitled, or for the purpose of obtaining anything of value from any person,[1] or for any other purpose—

(1) willfully, knowingly, and with intent to deceive, uses a social security account number, assigned by the Secretary (in the exercise of his authority under section 205(c)(2) to establish and maintain records) on the basis of false information furnished to the Secretary by him or by any other person; or

(2) with intent to deceive, falsely represents a number to be the social security account number assigned by the Secretary to him or to another person, when in fact such number is not the social security account number assigned by the Secretary to him or to such other person; or

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[1]P.L. 97-123, §4(a)(1), inserted "or for the purpose of obtaining anything of value from any person,", effective with respect to violations committed after December 29, 1981.

(3) knowingly alters a social security card issued by the Secretary, buys or sells a card that is, or purports to be, a card so issued, counterfeits a social security card, or possesses a social security card or counterfeit social security card with intent to sell or alter it; or[1]

(h) discloses, uses, or compels the disclosure of the social security number of any person in violation of the laws of the United States;[2]

shall be guilty of a felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years[3], or both.

DEFINITION OF WAGES

SEC. 209. [42 U.S.C. 409] For the purposes of this title, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this title under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

(a)(1) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $3,600 with respect to employment has been paid to an individual during any calendar year prior to 1955, is paid to such individual during such calendar year;

(2) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,200 with respect to employment has been paid to an individual during any calendar year after 1954 and prior to 1959, is paid to such individual during such calendar year;

(3) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $4,800 with respect to employment has been paid to an individual during any calendar year after 1958 and prior to 1966, is paid to such individual during such calendar year;

(4) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $6,600 with respect to employment has been paid to an individual during any calendar year after 1965 and prior to 1968, is paid to such individual during such calendar year;

(5) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $7,800 with respect to employment has been paid to

[1] P.L. 97-123, §4(a)(2), added paragraph (3), effective with respect to violations committed after December 29, 1981.

[2] See P.L. 80-759, "Military Selective Service Act", §12(e), with respect to disclosures to facilitate selective service registration.

[3] P.L. 97-123, §4(b), struck out from the end of this §208 "misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year" and substituted "felony and upon conviction thereof shall be fined not more than $5,000 or imprisoned for not more than five years", effective with respect to violations committed after December 29, 1981.

an individual during any calendar year after 1967 and prior to 1972, is paid to such individual during such calendar year;

(6) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $9,000 with respect to employment has been paid to an individual during any calendar year after 1971 and prior to 1973 is paid to such individual during any such calendar year;

(7) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $10,800 with respect to employment has been paid to an individual during any calendar year after 1972 and prior to 1974, is paid to such individual during such calendar year;

(8) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to $13,200 with respect to employment has been paid to an individual during any calendar year after 1973 and prior to 1975, is paid to such individual during such calendar year;

(9) That part of remuneration which, after remuneration (other than remuneration referred to in the succeeding subsections of this section) equal to the contribution and benefit base (determined under section 230) with respect to employment has been paid to an individual during any calendar year after 1974 with respect to which such contribution and benefit base is effective, is paid to such individual during such calendar year;

(b) The amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of (1)[1] sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term "wages" only payments which are received under a workmen's compensation law)[2], or (2)[3] medical or hospitalization expenses in connection with sickness or accident disability, or (3)[4] death;

[(c) Stricken.[5]]

(d) Any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of six calendar months following the last calendar month in which the employee worked for such employer;

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[1]P.L. 98-21, §324(c)(3)(A), struck out paragraph (1) and redesignated paragraph (2) as paragraph (1). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[2]P.L. 97-123, §3(a), inserted "(but, in the case of payments made to an employee or any of his dependents, this clause shall exclude from the term 'wages' only payments which are received under a workmen's compensation law)". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §3(g), p. 787.

[3]P.L. 98-21, §324(c)(3)(A), redesignated paragraph (3) as paragraph (2). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[4]P.L. 98-21, §324(c)(3)(A), redesignated paragraph (4) as paragraph (3). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[5]P.L. 98-21, §324(c)(3)(B), struck out subsection (c). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

(e) Any payment made to, or on behalf of, an employee or his beneficiary (1) from or to a trust exempt from tax under section 165(a) of the Internal Revenue Code of 1939[1] at the time of such payment or, in the case of a payment after 1954, under sections 401 and 501(a) of the Internal Revenue Code of 1954[2], unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or (2) under or to an annuity plan which, at the time of such payment, meets the requirements of section 165(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1939[3] or, in the case of a payment after 1954 and prior to 1963, the requirements of section 401(a)(3), (4), (5), and (6) of the Internal Revenue Code of 1954[4], or (3) under or to an annuity plan which, at the time of any such payment after 1962, is a plan described in section 403(a) of the Internal Revenue Code of 1954[5], or (4) under or to a bond purchase plan which, at the time of any such payment after 1962, is a qualified bond purchase plan described in section 405(a) of the Internal Revenue Code of 1954[6] [7], or (5) under or to an annuity contract described in section 403(b) of the Internal Revenue Code of 1954[8], other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise), or[9] (6) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3) of such Code[10]), or[11] (7) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this subsection to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974[12];[13] [14], or (8) under a simplified employee pension (as defined in section 408(k) of the Internal Revenue Code of 1954[15]) if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2) of such Code[16] for such payment;[17]

(f) The payment by an employer (without deduction from the remuneration of the employee)—

(1) of the tax imposed upon an employee under section 3101 of the Internal Revenue Code of 1954[18], or

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[1]P.L. 76-1.
[2]P.L. 83-591.
[3]P.L. 76-1.
[4]P.L. 83-591.
[5]P.L. 83-591.
[6]P.L. 83-591.
[7]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(a)(5)(D), with respect to simplified employee pension payments, p. 818.
[8]P.L. 83-591.
[9]P.L. 98-21, §324(c)(2), added paragraph (5). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.
[10]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(v), p. 837.
[11]P.L. 98-21, §324(c)(2), added paragraph (6). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.
[12]P.L. 93-406.
[13]As in original. Semicolon should be stricken.
[14]P.L. 98-21, §324(c)(2), added paragraph (7). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.
[15]P.L. 83-591.
[16]P.L. 83-591.
[17]P.L. 98-21, §328(b), added paragraph (8), effective with respect to remuneration paid after December 31, 1983.
[18]See P.L. 83-591, "Internal Revenue Code of 1954", §3101, p. 813.

(2) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(g)(1) Remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

(2) Cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this paragraph, the term "domestic service in a private home of the employer" does not include service described in section 210(f)(5);

(3) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in section 210(f)(5);

(h)(1) Remuneration paid in any medium other than cash for agricultural labor;

(2) Cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (A) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (B) the employee performs agricultural labor for the employer on twenty days or more during such year for cash remuneration computed on a time basis;

[(i) Stricken.[1]]

(j) Remuneration paid by an employer in any year to an employee for service described in section 210(j)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(k) Remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 of the Internal Revenue Code of 1954[2];

(l)(1) Tips paid in any medium other than cash;

(2) Cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(m) Any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(1) upon or after the termination of an employee's employment relationship because of (A) death, or (B) retirement for disability, [(C) Stricken.[3]] and

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[1]P.L. 98-21, §324(c)(3)(B), struck out subsection (i). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[2]P.L. 83-591.

[3]P.L. 98-21, §324(c)(3)(C)(ii), struck out subparagraph (C). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

(2) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(n) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(o) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(p) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1954[1] in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100.[2]

(p)[3] Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue Code of 1954[4] (relating to amounts received under qualified group legal services plans);

(q) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129[5] of the Internal Revenue Code of 1954[6]; or

(r) The value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119 of the Internal Revenue Code of 1954[7].[8]

Nothing in the regulations prescribed for purposes of chapter 24 of the Internal Revenue Code of 1954[9] (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this title.[10]

For purposes of this title, in the case of domestic service described in subsection (g)(2), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under

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[1] P.L. 83-591.
[2] As in original. Period should be a semicolon.
[3] As in original. Duplicate subsection designation.
[4] P.L. 83-591.
[5] P.L. 97-34, §124(e)(2)(B), added "or 129", effective with respect to remuneration paid after December 31, 1981.
[6] P.L. 83-591.
[7] P.L. 83-591.
[8] P.L. 98-21, §327(a)(2), added subsection (r), effective with respect to remuneration paid after December 31, 1983.
[9] See P.L. 83-591, "Internal Revenue Code of 1954", chapter 24, p. 884.
[10] P.L. 98-21, §327(b)(2), added the preceding sentence to §209, effective with respect to remuneration paid after December 31, 1983.

such conditions and to such extent as may be prescribed by regulations made under this title, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (g)(2).

For purposes of this title, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of section 210(l)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act[1].

For purposes of this title, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act[2], to which the provisions of section 210(o) are applicable, (1) the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service only amounts certified as payable pursuant to section 5(c) or 6(l) of the Peace Corps Act[3], and (2) any such amount shall be deemed to have been paid to such individual at the time the service, with respect to which it is paid, is performed.

For purposes of this title, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) of the Internal Revenue Code of 1954[4] or (if no statement including such tips is so furnished) at the time received.

For purposes of this title, in any case where an individual is a member of a religious order (as defined in section 3121(r)(2) of the Internal Revenue Code of 1954[5]) performing service in the exercise of duties required by such order, and an election of coverage under section 3121(r) of such Code[6] is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a) of this section, include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

For purposes of this title, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active

[1]See, instead, 37 U.S.C. 201, 203, and 1009.
[2]P.L. 87-293.
[3]P.L. 87-293.
[4]P.L. 83-591.
[5]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(r), p. 835.
[6]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(r), p. 835.

duty), the term "wages" shall, subject to the provisions of subsection (a) of this section, include any payment under section 371(b) of such title 28 which is received during the period of such service.[1]

Nothing in any of the foregoing provisions of this section (other than subsection (a)) shall exclude from the term "wages"—

(1) Any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1954[2]) to the extent not included in gross income by reason of section 402(a)(8) of such Code[3], or

(2) Any amount which is treated as an employer contribution under section 414(h)(2) of such Code[4].[5]

Any amount deferred under a nonqualified deferred compensation plan (within the meaning of section 3121(v)(2)(C) of the Internal Revenue Code of 1954[6]) shall be taken into account for purposes of this title as of the later of when the services are performed, or when there is no substantial risk of forfeiture of the rights to such amount. Any amount taken into account as wages by reason of the preceding sentence (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this title.[7]

DEFINITION OF EMPLOYMENT[8]

SEC. 210. [42 U.S.C. 410] For the purposes of this title—

Employment

(a) The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this title under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950[9] (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen or resident of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign affiliate (as defined in section 3121(l)(8) of the Internal Revenue Code of 1954[10]) of an

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[1]P.L. 98-21, §101(c)(1), added the preceding paragraph, effective with respect to remuneration paid after December 31, 1983.

See P.L. 98-118, §4, with respect to coverage of retired Federal judges on active duty.

[2]P.L. 83-591.

[3]P.L. 83-591.

[4]P.L. 83-591.

[5]P.L. 98-21, §324(c)(1), added the preceding paragraph. For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[6]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(v), p. 837.

[7]P.L. 98-21, §324(c)(1), added the preceding paragraph. For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §324(d), p. 795.

[8]See P.L. 98-168, [Federal Physicians Comparability Allowance], §208, with respect to the election by certain Federal workers to terminate participation in a retirement system.

[9]P.L. 98-21, §322(a)(1)(A), struck out "either", effective with respect to taxable years beginning on or after April 20, 1983.

[10]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(l), p. 831.

American employer during any period for which there is in effect an agreement, entered into pursuant to section 3121(l) of such Code[1], with respect to such affiliate,[2],[3] or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233[4]; except that, in the case of service performed after 1950, such term shall not include—

(1) Service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949[5], as amended, or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) Domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) Service performed by an individual in the employ of his spouse, and service performed by a child under the age of twenty-one in the employ of his father or mother;

(B) Service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) Service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) Service performed in the employ of the United States or any instrumentality of the United States, if such service—

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(l), p. 831.

[2]P.L. 98-21, §321(b), amended subparagraph (B) in its entirety, effective with respect to agreements entered into after April 20, 1983. See P.L. 98-21, "Social Security Amendments of 1983", §321(f)(1)(B), with respect to electing an earlier effective date.

[3]As in original. One comma should be stricken.

[4]P.L. 98-21, §322(a)(1)(B), added subparagraph (C), effective for taxable years beginning on or after April 20, 1983.

[5]P.L. 81-439, Title V, has been inactive since December 31, 1964.

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who (i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days), or (ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by a law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to—

(i) service performed as the President or Vice President of the United States,

(ii) service performed—

(I) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(II) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(III) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(iii) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(iv) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress, or

(v) any other service in the legislative branch of the Federal Government if such service is performed by an individual who, on December 31, 1983, is not subject to subchapter III of chapter 83 of title 5, United States Code;[1]

(6) Service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

[1]P.L. 98-21, §101(a)(1), amended paragraph (5) in its entirety, effective with respect to remuneration paid after December 31, 1983.

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;[1]

(7) Service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service included under an agreement under section 218,

(B) service which, under subsection (k), constitutes covered transportation service,

(C) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an officer or employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(D) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

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[1]P.L. 98-21, §101(a)(1), amended paragraph (6) in its entirely, effective with respect to remuneration paid after December 31, 1983.

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis, or

(E) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (C) shall apply;

(8)[1] Service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this paragraph[2] shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under section 3121(r) of the Internal Revenue Code of 1954[3] is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;[4]

(9) Service performed by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code[5];

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954[6] if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 218(c)(5) are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) Service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

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[1]P.L. 98-21, §102(a)(1), struck out "(A)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §102(c), p. 794.

[2]P.L. 98-21, §102(a)(2), struck out "subparagraph" and substituted "paragraph". For the effective date, see P.L. 98-21, §102(c), p. 794.

[3]See P.L. 83-591, "Internal Revenue Code of 1954", §3121(r), p. 835.

[4]P.L. 98-21, §102(a)(3), struck out subparagraph (B). For the effective date, see P.L. 98-21, §102(c), p. 794.

[5]As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", §3231, p. 842.

[6]P.L. 83-591.

(12) Service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) If the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) If the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) Service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) Service performed by an individual under the age of eighteen in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) Service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) Service performed in the employ of an international organization entitled to enjoy privileges, exemptions, and immunities as an international organization under the International Organizations Immunities Act[1] (59 Stat. 669);

(16) Service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950[2], as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

[1] P.L. 79-291.
[2] P.L. 81-831.

(18) Service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act[1] (8 U.S.C. 1101(a)(15)(H)(ii));

(19) Service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act[2], as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or,[3]

(20) Service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

Included and Excluded Service

(b) If the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than thirty-one consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by paragraph (9) of subsection (a).

American Vessel

(c) The term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of

[1] P.L. 82-414.
[2] P.L. 82-414.
[3] As in orginal. Comma should be stricken.

the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State.

American Aircraft

(d) The term "American aircraft" means an aircraft registered under the laws of the United States.

American Employer

(e) The term "American employer" means an employer which is (1) the United States or any instrumentality thereof, (2) a State or any political subdivision thereof, or any instrumentality of any one or more of the foregoing, (3) an individual who is a resident of the United States, (4) a partnership, if two-thirds or more of the partners are residents of the United States, (5) a trust, if all of the trustees are residents of the United States, or (6) a corporation organized under the laws of the United States or of any State.

Agricultural Labor

(f) The term "agricultural labor" includes all service performed—

(1) On a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act[1], as amended, or in connection with the ginning of cotton, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes.

(4)(A) In the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed.

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincor-

[1]P.L. 71-10.

porated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

(5) On a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

The provisions of subparagraphs (A) and (B) of paragraph (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

Farm

(g) The term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

State

(h) The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

United States

(i) The term "United States" when used in a geographical sense means the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

Employee

(j) The term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2) of this subsection) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his

principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

Covered Transportation Service

(k)(1) Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

(2) Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system is, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) For the purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this title, and some of such employees become employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of (i) a State, (ii) one or more political subdivisions of a State, or (iii) a State and one or more of its political subdivisions.

Service in the Uniformed Services

(l)(1) Except as provided in paragraph (4), the term "employment" shall, notwithstanding the provisions of subsection (a) of this section, include service performed after December 1956 by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act[1], except that it shall also include "active duty for training" as described in such section[2].

(3) The term "inactive duty training" means "inactive duty training" as described in such section 102[3].

(4)(A) Paragraph (1) of this subsection shall not apply in the case of any service, performed by an individual as a member of a uniformed service, which is creditable under section 3(i) of the Railroad Retirement Act of 1974[4]. The Railroad Retirement Board shall notify the Secretary of Health, Education, and Welfare, with respect to all such service which is so creditable.

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[1]P.L. 84-881 (70 Stat. 857), approved August 1, 1956; however, P.L. 85-857 (72 Stat. 1105), §1, approved September 2, 1958, codified laws with respect to veterans in Title 38 of the U.S. Code. For the current text, see 38 U.S.C. 101(21)-(23).

[2]See 38 U.S.C. 101(22).

[3]See 38 U.S.C. 101(23).

[4]P.L. 75-162 [as amended by P.L. 93-445].

(B) In any case where benefits under this title are already payable on the basis of such individual's wages and self-employment income at the time such notification (with respect to such individual) is received by the Secretary, the Secretary shall certify no further benefits for payment under this title on the basis of such individual's wages and self-employment income, or shall recompute the amount of any further benefits payable on the basis of such wages and self-employment income, as may be required as a consequence of subparagraph (A) of this paragraph. No payment of a benefit to any person on the basis of such individual's wages and self-employment income, certified by the Secretary prior to the end of the month in which he receives such notification from the Railroad Retirement Board, shall be deemed by reason of this subparagraph to have been an erroneous payment or a payment to which such person was not entitled. The Secretary shall, as soon as possible after the receipt of such notification from the Railroad Retirement Board, advise such Board whether or not any such benefit will be reduced or terminated by reason of subparagraph (A), and if any such benefit will be so reduced or terminated, specify the first month with respect to which such reduction or termination will be effective.

Member of a Uniformed Service[1]

(m) The term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act[2]), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

[1]See P.L. 95-202, "GI Bill Improvement Act of 1977", §401, with respect to the WW II military status of the Women's Air Forces Service Pilots.

[2]P.L. 84-881 (70 Stat. 857), approved August 1, 1956; however, P.L. 85-857 (72 Stat. 1105), §1, approved September 2, 1958, codified laws with respect to veterans in Title 38 of the U.S. Code. See, instead, 38 U.S.C. 101(27).

(B) who, under the Universal Military Training and Service Act[1], has been selected for active military or naval service;

and has been ordered or directed to proceed to such place. The term does not include a temporary member of the Coast Guard Reserve.

Crew Leader

(n) The term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. A crew leader shall, with respect to services performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

Peace Corps Volunteer Service

(o) The term "employment" shall, notwithstanding the provisions of subsection (a), include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act[2].

Medicare Qualified Federal Employment[3]

(p) For purposes of sections 226 and 226A, the term "medicare qualified Federal employment" means any service which would constitute "employment" as defined in subsection (a) of this section but for the application of the provisions of subsection (a)(5).[4]

Treatment of Real Estate Agents and Direct Sellers[5]

(q)[6] Notwithstanding any other provision of this title, the rules of section 3508 of the Internal Revenue Code of 1954[7] shall apply for purposes of this title.

SELF-EMPLOYMENT

SEC. 211. [42 U.S.C. 411] For the purposes of this title—

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[1]P.L. 80-759. As in original. Should refer to "Military Selective Service Act", [50 U.S.C. 454, 455, and 471].

[2]P.L. 87-293.

[3]P.L. 97-248, §278(b)(1), added this subsection (p). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[4]P.L. 98-21, §101(a)(2), struck out "of—" and paragraphs (1) and (2) and substituted "of subsection (a)(5).", effective with respect to remuneration paid after December 31, 1983.

[5]P.L. 97-248, §269(b), added this subsection, effective with respect to services performed after December 31, 1982.

[6]P.L. 97-448, §309(b)(23), redesignated this subsection (p) as subsection (q), effective with respect to services performed after December 31, 1982.

[7]See P.L. 83-591, "Internal Revenue Code of 1954", §3508, p. 890.

Net Earnings From Self-Employment

(a) The term "net earnings from self-employment" means the gross income, as computed under chapter 1 of the Internal Revenue Code[1], derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183 of such code[2], from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

(1) There shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares), together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) There shall be excluded any gain or loss (A) which is considered under chapter 1 of the Internal Revenue Code[3] as gain or loss from the sale or exchange of a capital asset, (B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 of the Internal Revenue Code of 1954[4] applies to such gain or loss,[5] (C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither (i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor (ii) property held primarily for sale to customers in the ordinary course of the trade or business;

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[1]P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", subtitle A.

[2]P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954".

[3]P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", subtitle A.

[4]P.L. 83-591.

[5]As in original. There should be "or" before "(C)".

(4) The deduction for net operating losses provided in section 23(s) of such code[1] shall not be allowed;

(5)(A) If any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife;

(B) If any portion of a partner's distributive share of the ordinary net income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) A resident of the Commonwealth of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to the provisions of section 933 of the Internal Revenue Code of 1954[2];

(7) An individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to earned income from sources without the United States) and section 931 (relating to income from sources within possessions of the United States) of the Internal Revenue Code of 1954[3];

(8) The term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) of the Internal Revenue Code of 1954[4] shall be deemed not to include the Virgin Islands, Guam, or American Samoa;

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or

[1] P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", §172.
[2] P.L. 83-591.
[3] P.L. 83-591.
[4] P.L. 83-591.

its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) The exclusion from gross income provided by section 911(a)(1) of the Internal Revenue Code of 1954[1] shall not apply;[2]

(11) In lieu of the deduction provided by section 164(f) of the Internal Revenue Code of 1954[3] (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 of such Code[4] for such year; and[5]

(12)[6] There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1954[7] to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 210(f)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

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[1]P.L. 83-591.

[2]P.L. 98-21, §323(b)(2)(B), effective with respect to taxable years beginning after December 31, 1981, and before January 1, 1984, amended paragraph (10) to read: "(10) In the case of an individual described in section 911(d)(1)(B) of the Internal Revenue Code of 1954, the exclusion from gross income provided by section 911(a)(1) of such Code shall not apply;".

P.L. 98-21, §323(b)(2)(A), amended paragraph (10) in its entirety, effective with respect to taxable years beginning after December 31, 1983.

[3]P.L. 83-591.

[4]See P.L. 83-591, "Internal Revenue Code of 1954", §1401, p. 803.

[5]P.L. 98-21, §124(c)(3), inserted this paragraph (11), effective with respect to taxable years beginning after December 31, 1989.

[6]P.L. 98-21, §124(c)(3), redesignated paragraph (11) as paragraph (12), effective with respect to taxable years beginning after December 31, 1989.

[7]P.L. 83-591.

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954[1] applies) is not more than $2,400, his distributive share of income described in section 702(a)(9)[2] of such Code[3] derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954[4] applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9)[5] of such Code[6] derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(9)[7] derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

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[1] P.L. 83-591.
[2] As in original. Should be section "702(a)(8)" as redesignated by P.L. 94-455, §1901(b)(1)(I)(i).
[3] P.L. 83-591.
[4] P.L. 83-591.
[5] As in original. Should be section "702(a)(8)" as redesignated by P.L. 94-455, §1901(b)(1)(I)(i).
[6] P.L. 83-591.
[7] As in original. Should be section "702(a)(8)" as redesignated by P.L. 94-455, §1901(b)(1)(I)(i).

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g), or by a partnership of which an individual is a member on a regular basis as defined in subsection (g), but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

Self-Employment Income[1]

(b) The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233[2]) during any taxable year beginning after 1950; except that such term shall not include—

(1) That part of the net earnings from self-employment which is in excess of—

(A) For any taxable year ending prior to 1955, (i) $3,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(B) For any taxable year ending after 1954 and prior to 1959, (i) $4,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(C) For any taxable year ending after 1958 and prior to 1966, (i) $4,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(D) For any taxable year ending after 1965 and prior to 1968, (i) $6,600, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(E) For any taxable year ending after 1967 and beginning prior to 1972, (i) $7,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(F) For any taxable year beginning after 1971 and prior to 1973, (i) $9,000, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(G) For any taxable year beginning after 1972 and prior to 1974, (i) $10,800, minus (ii) the amount of the wages paid to such individual during the taxable year; and

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[1]See P.L. 98-4, "Payment-in-Kind Tax Treatment Act of 1983", §2(a) and §3(b)(4), with respect to the treatment of agricultural commodities received under a 1983 payment-in-kind program.

[2]P.L. 98-21, §322(b)(1), inserted ", except as provided by an agreement under section 233", effective with respect to taxable years beginning on or after April 20, 1983.

(H) For any taxable year beginning after 1973 and prior to 1975, (i) $13,200, minus (ii) the amount of the wages paid to such individual during the taxable year; and

(I) For any taxable year beginning in any calendar year after 1974, (i) an amount equal to the contribution and benefit base (as determined under section 230) which is effective for such calendar year, minus (ii) the amount of the wages paid to such individual during such taxable year; or

(2) The net earnings from self-employment, if such net earnings for the taxable year are less than $400.

An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for the purposes of this subsection, be considered to be a nonresident alien individual.

Trade or Business

(c) The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23 of the Internal Revenue Code[1], except that such term shall not include—

(1) The performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary pursuant to section 218;

(2) The performance of service by an individual as an employee, other than—

(A) service described in section 210(a)(14)(B) performed by an individual who has attained the age of eighteen,

(B) service described in section 210(a)(16),

(C) service described in section 210(a)(11), (12), or (15) performed in the United States by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary pursuant to section 218, and

(F) service described in section 210(a)(20);

(3) The performance of service by an individual as an employee or employee representative as defined in section 1532 of the Internal Revenue Code[2];

(4) The performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;[3]

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[1]P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", §162.

[2]P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", §3231, p. 842.

[3]See P.L. 95-216, "Social Security Amendment of 1977", §316(a) and (b), with respect to revocation of exemption from coverage.

(5) The performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or[1]

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1954[2] is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under section 1402(e) of the Internal Revenue Code of 1954[3] is effective with respect to him.

Partnership and Partner

(d) The term "partnership" and the term "partner" shall have the same meaning as when used in supplement F of chapter 1 of the Internal Revenue Code[4].

Taxable Year

(e) The term "taxable year" shall have the same meaning as when used in chapter 1 of the Internal Revenue Code[5]; and the taxable year of any individual shall be a calendar year unless he has a different taxable year for the purposes of chapter 1 of such code[6], in which case his taxable year for the purposes of this title shall be the same as his taxable year under such chapter 1[7].

Partner's Taxable Year Ending as Result of Death

(f) In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interests.

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[1] See P.L. 95-216, "Social Security Amendment of 1977" [illegible] (b), with respect to revocation of exemption from coverage.

[2] See P.L. 83-591, "Internal Revenue Code of 1954", §1[illegible]

[3] See P.L. 83-591, "Internal Revenue Code of 1954".

[4] P.L. 76-1. As in original. Should refer to P.L. 83-[illegible]evenue Code of 1954", chapter 1, subchapter K.

[5] P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", subtitle A, p. 803.

[6] P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", subtitle A, p. 803.

[7] P.L. 76-1. As in original. Should refer to P.L. 83-591, "Internal Revenue Code of 1954", subtitle A, p. 803.

Regular Basis

(g) An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

CREDITING OF SELF-EMPLOYMENT INCOME TO CALENDAR YEARS

SEC. 212. [42 U.S.C. 412] (a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

QUARTER AND QUARTER OF COVERAGE

Definitions

SEC. 213. [42 U.S.C. 413] (a) For the purposes of this title—

(1) The term "quarter", and the term "calendar quarter", means[1] a period of three calendar months ending on March 31, June 30, September 30, or December 31.

(2)(A) The term "quarter of coverage" means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 212) with $100 or more of self-employment income; and

[1] As in original.

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 212) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d)), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal to $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 230) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses

(i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 214, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 216(i) are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 214(a)(3) are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

Crediting of Wages Paid in 1937

(b) With respect to wages paid to an individual in the six-month periods commencing either January 1, 1937, or July 1, 1937; (A) if wages of not less than $100 were paid in any such period, one-half of the total amount thereof shall be deemed to have been paid in each of the calendar quarters in such period; and (B) if wages of less than $100 were paid in any such period, the total amount thereof shall be

deemed to have been paid in the latter quarter of such period, except that if in any such period, the individual attained age sixty-five, all of the wages paid in such period shall be deemed to have been paid before such age was attained.

Alternative Method for Determining Quarters of Coverage With Respect to Wages in the Period from 1937 to 1950

(c) For purposes of section 214(a), an individual shall be deemed to have one quarter of coverage for each $400 of his total wages prior to 1951 (as defined in section 215(d)(1)(C)), except where—

(1) such individual is not a fully insured individual on the basis of the number of quarters of coverage so derived plus the number of quarters of coverage derived from the wages and self-employment income credited to him for periods after 1950, or

(2) such individual's elapsed years (for purposes of section 214 (a)(1)) are less than 7.

Amount Required for a Quarter of Coverage[1]

(d)(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Secretary shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the determination under this paragraph is made to the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 215(a)(1)(D)),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

INSURED STATUS FOR PURPOSES OF OLD-AGE AND SURVIVORS INSURANCE BENEFITS

SEC. 214. [42 U.S.C. 414] For the purposes of this title—

[1]The following changes have been made in the quarter of coverage amount:
For 1979, $260 (43 FR 53504; November 16, 1978);
For 1980, $290 (44 FR 62957; November 1, 1979);
For 1981, $310 (45 FR 76252; November 18, 1980);
For 1982, $340 (46 FR 53792; October 30, 1981);
For 1983, $370 (47 FR 51003; November 10, 1982);
For 1984, $390 (48 FR 50414; November 1, 1983).

Fully Insured Individual

(a) The term "fully insured individual" means any individual who had not less than—

(1) one quarter of coverage (whenever acquired) for each calendar year elapsing after 1950 (or, if later, the year in which he attained age 21) and before the year in which he died or (if earlier) the year in which he attained age 62, except that in no case shall an individual be a fully insured individual unless he has at least 6 quarters of coverage; or

(2) 40 quarters of coverage; or

(3) in the case of an individual who died before 1951, 6 quarters of coverage;

not counting as an elapsed year for purposes of paragraph (1) any year any part of which was included in a period of disability (as defined in section 216(i)).

Currently Insured Individual

(b) The term "currently insured individual" means any individual who had not less than six quarters of coverage during the thirteen-quarter period ending with (1) the quarter in which he died, (2) the quarter in which he became entitled to old-age insurance benefits, (3) the quarter in which he became entitled to primary insurance benefits under this title as in effect prior to the enactment of this section[1], or (4) in the case of any individual entitled to disability insurance benefits, the quarter in which he most recently became entitled to disability insurance benefits, not counting as part of such thirteen-quarter period any quarter any part of which was included in a period of disability unless such quarter was a quarter of coverage.

COMPUTATION OF PRIMARY INSURANCE AMOUNT

SEC. 215. [42 U.S.C. 415] For the purposes of this title—

Primary Insurance Amount

(a)(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b)) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded, if not a multiple of $0.10, to the next lower multiple of $0.10[2], and thereafter increased as provided in subsection (i).

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[1]August 28, 1950 [P.L. 81-734, §104(a); 64 Stat. 477, 505].

[2]P.L. 97-35, §2206(b)(5), struck out "rounded in accordance with subsection (g)" and substituted "rounded, if not a multiple of $0.10, to the next lower multiple of $0.10", effective with respect to

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible of[1] such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the second calendar year preceding the calendar year for which the determination is made, by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amounts[2] so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this clause under subsection (i).[3]

(ii) For purposes of clause (i)[4], the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 217, compensation under the Railroad Retirement Act of 1937[5] prior to 1951 which is creditable to such individual pursuant to this title, and wages deemed to be paid prior to 1951 to such individual under section 231) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii)) and in each of which he is credited with wages (including wages deemed to be paid to such individual

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initial calculations and adjustments in primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[1]As in original. Should be "for".

[2]As in original. Should be "amount".

[3]P.L. 97-35, §2201(a), amended clause (i) in its entirety, effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-35, §2201(b)(1), struck out "(i)(II)" and substituted "(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[5]P.L. 75-162.

under scetion[1] 217, compensation under the Railroad Retirement Act of 1937[2] or 1974[3] which is creditable to such individual pursuant to this title, and wages deemed to be paid to such individual under section 229) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e), may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 230 as in effect immediately prior to the enactment of the Social Security Amendments of 1977[4] had remained in effect without change.

(D) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the average of the total wages (as described in subparagraph (B)(ii)(I)) on which that formula is based. With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for detemining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3)), and each increase provided under subsection (i)(2), that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less

[1] As in original. Should be "section".
[2] P.L. 75-162.
[3] P.L. 75-162 [as amended by P.L. 93-445].
[4] December 20, 1977 [P.L. 95-216, 91 Stat. 1509].

than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i)[1] thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this title, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 216(i)(2)(C),

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i)[2] thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B)[3] an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recomputation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under section 215(a) as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by section 215(d), in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978, as

[1]P.L. 97-35, §2201(b)(2), struck out "(C)(i)(II)" and substituted "(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[2]P.L. 97-35, §2201(b)(3)(A), struck out "(C)(i)(II)" and substituted "(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]Subparagraph (B) and clauses (i) and (ii) thereof are so aligned in law.

modified by paragraph (6),[1] shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4)) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A)[2]) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4).

(5) For purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of subsection (a) shall be increased to $11.50[3]. The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978[4] shall be revised as provided by subsection (i) for each year after 1978.

(6)(A) In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table[5], revised as provided by subsection (i), as applicable, shall be extended for average monthly wages of less than $76.00 and primary insurance benefits (as determined under subsection (d)) of less than $16.20.

(B) The Secretary shall determine and promulgate in regulations the methodology for extending the table under subparagraph (A).[6]

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[1]P.L. 97-35, §2201(c)(2), inserted ", as modified by paragraph (6),", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[2]P.L. 97-35, §2201(b)(3)(B), struck out "but without regard to clauses (iv) and (v) thereof", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]P.L. 97-35, §2201(c)(3)(A), inserted "and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(a)(1)(A), struck out ", and the table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be modified as specified in paragraph (6)". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-35, §2201(c)(3)(B), inserted ", modified by the application of paragraph (6),", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(a)(1)(B), struck out ", modified by the application of paragraph (6),". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[5]P.L. 97-123, §2(a)(2), struck out "The table of benefits in effect in December 1978 under this section, referred to in paragraph (4) in the matter following subparagraph (B) and in paragraph (5)", and substituted "In applying the table of benefits in effect in December 1978 under this section for purposes of the last sentence of paragraph (4), such table". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[6]P.L. 97-35, §2201(c)(1), added this new paragraph (6), effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

(7)(A) In the case of an individual whose primary insurance amount would be computed under paragraph (1) of this subsection, who—

(i) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986 and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(ii) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subparagraph (C), but excluding a payment under the Railroad Retirement Act of 1974[1] or 1937[2]) which is based in whole or in part upon his or her earnings for service which did not constitute "employment" as defined in section 210 for purposes of this title (hereafter in this paragraph and in subsection (d)(5) referred to as "noncovered service"), the primary insurance amount of that individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be computed or recomputed under subparagraph (B) with respect to the initial month in which the individual becomes eligible for such benefits.

(B)(i) If paragraph (1) of this subsection would apply to such an individual (except for subparagraph (A) of this paragraph), there shall first be computed an amount equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that for purposes of such computation the percentage of the individual's average indexed monthly earnings established by subparagraph (A)(i) of paragraph (1) shall be the percent specified in clause (ii). There shall then be computed (without regard to this paragraph) a second amount, which shall be equal to the individual's primary insurance amount under paragraph (1) of this subsection, except that such second amount shall be reduced by an amount equal to one-half of the portion of the monthly periodic payment which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which the individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits. The individual's primary insurance amount shall be the larger of the two amounts computed under this subparagraph (before the application of subsection (i)) and shall be deemed to be computed under paragraph (1) of this subsection for the purpose of applying other provisions of this title.

(ii) For purposes of clause (i), the percent specified in this clause is—

(I) 80.0 percent with respect to individuals who initially become eligible for old-age or disability insurance benefits in 1986;

(II) 70.0 percent with respect to individuals who so become eligible in 1987;

(III) 60.0 percent with respect to individuals who so become eligible in 1988;

(IV) 50.0 percent with respect to individuals who so become eligible in 1989; and

[1]P.L. 75-162 [as amended by P.L. 93-445].
[2]P.L. 75-162.

(V) 40.0 percent with respect to individuals who so become eligible in 1990 or thereafter.

(C)(i) Any periodic payment which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly payment (as determined by the Secretary), and such equivalent monthly payment shall constitute a monthly periodic payment for purposes of this paragraph.

(ii) In the case of an individual who has elected to receive a periodic payment that has been reduced so as to provide a survivors[1] benefit to any other individual, the payment shall be deemed to be increased (for purposes of any computation under this paragraph or subsection (d)(5)) by the amount of such reduction.

(iii) If an individual to whom subparagraph (A) applies is eligible for a periodic payment beginning with a month that is subsequent to the month in which he or she becomes eligible for old-age or disability insurance benefits, the amount of that payment (for purposes of subparagraph (B)) shall be deemed to be the amount to which he or she is, or is deemed to be, entitled (subject to clauses (i), (ii), and (iv) of this subparagraph) in such subsequent month.

(iv) For purposes of this paragraph, the term "periodic payment" includes a payment payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(D) This paragraph shall not apply in the case of an individual who has 30 years or more of coverage (as defined in paragraph (1)(C)(ii)). In the case of an individual who has more than 25 years of coverage but less than 30 years of coverage (as so defined), the percent specified in the applicable subdivision of subparagraph (B)(ii) shall (if such percent is smaller than the percent specified in whichever of the following clauses applies) be deemed to be—

(i) 80 percent, in the case of an individual who has 29 of such years of coverage;

(ii) 70 percent, in the case of an individual who has 28 of such years;

(iii) 60 percent, in the case of an individual who has 27 of such years; and

(iv) 50 percent, in the case of an individual who has 26 of such years.

(E) This paragraph shall not apply in the case of an individual who on January 1, 1984—

(i) is an employee performing service to which social security coverage is extended on that date solely by reason of the amendments made by section 101 of the Social Security Amendments of 1983[2]; or

(ii) is an employee of a nonprofit organization which (on December 31, 1983) did not have in effect a waiver certificate under section 3121(k) of the Internal Revenue Code of 1954[3] and to the employees of which social security coverage is extended on that date solely by reason of the amendments made by section 102 of that Act[4], unless social security coverage had previously

[1] As in original.
[2] P.L. 98-21, approved April 20, 1983; 97 Stat. 65.
[3] P.L. 83-591; however, §3121(k) was repealed by P.L. 98-21, §102(b)(2).
[4] P.L. 98-21, approved April 20, 1983; 97 Stat. 65.

extended to service performed by such individual as an employee of that organization under a waiver certificate which was subsequently (prior to December 31, 1983) terminated.[1]

Average Indexed Monthly Earnings; Average Monthly Wage

(b)(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years reduced—

(i) in the case of an individual who is entitled to old-age insurance benefits (except as provided in the second sentence of this subparagraph), or who has died, by 5 years, and

(ii) in the case of an individual who is entitled to disability insurance benefits, by the number of years equal to one-fifth of such individual's elapsed years (disregarding any resulting fractional part of a year), but not by more than 5 years.

Clause (ii), once applicable with respect to any individual, shall continue to apply for purposes of determining such individual's primary insurance amount for purposes of any subsequent eligibility for disability or old-age insurance benefits unless prior to the month in which such eligibility begins there occurs a period of at least 12 consecutive months for which he was not entitled to a disability or an old-age insurance benefit. If an individual described in clause (ii) is living with a child (of such individual or his or her spouse) under the age of 3 in any calendar year which is included in such individual's computation base years, but which is not disregarded pursuant to clause (ii) or to subparagraph (B) (in determining such individual's benefit computation years) by reason of the reduction in the number of such individual's elapsed years under clause (ii), the number by which such elapsed years are reduced under this subparagraph pursuant to clause (ii) shall be increased by one (up to a combined total not exceeding 3) for each such calendar year; except that (I) no calendar year shall be disregarded by reason of this sentence (in determining such individual's benefit computation years) unless the individual was living with such child substantially throughout the period in which the child was alive and under the age of 3 in such year and the individual had no earnings as described in section 203(f)(5) in such year, (II) the particular calendar years to be disregarded under this sentence (in determining such benefit computation years) shall be those years (not otherwise disregarded under clause (ii)) which, before the application of section 215(f), meet the conditions of subclause (I), and (III) this sentence shall apply only to the extent that its application would not result in a lower primary insurance amount. The number of an individual's benefit computation years as determined under this subparagraph shall in no case be less than 2.[2]

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[1]P.L. 98-21, §113(a), added paragraph (7), effective April 20, 1983.

[2]P.L. 96-265, §102(a), amended subparagraph (A) in its entirety, effective only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of the new subparagraph shall apply only with respect to monthly benefits payable

(B) For purposes of this subsection with respect to any individual—

(i) the term "benefit computation years" means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term "computation base years" means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 202(j)(1) or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term "number of elapsed years" means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972[1]) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the second calendar year (after 1976) preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the computation base year for which the deter-

for months beginning on or after July 1, 1981.

[1]P.L. 92-603.

mination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under section 215(a) or 215(d) as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B), this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

Application of Prior Provisions in Certain Cases

(c) This subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

Primary Insurance Benefit Under 1939 Act

(d)(1) For purposes of column I of the table appearing in subsection (a), as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b), as in effect in December 1977 (but without regard to paragraph (4) thereof), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after the year in which the individual attained age 20 and prior to 1951; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divi-

sor") elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

(C) For the purposes of subparagraph (B), "total wages prior to 1951" with respect to an individual means the sum of (i) remuneration credited to such individual prior to 1951 on the records of the Secretary, (ii) wages deemed paid prior to 1951 to such individual under section 217, (iii) compensation under the Railroad Retirement Act of 1937[1] prior to 1951 creditable to him pursuant to this title, and (iv) wages deemed paid prior to 1951 to such individual under section 231.

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

(2) The provisions of this subsection shall be applicable only in the case of an individual—

(A) with respect to whom at least one of the quarters elapsing prior to 1951 is a quarter of coverage;

(B) except as provided in paragraph (3), who attained age 22 after 1950 and with respect to whom less than six of the quarters elapsing after 1950 are quarters of coverage, or who attained such age before 1951; and

(C)(i) who becomes entitled to benefits under section 202(a) or 223 after the date of the enactment of the Social Security Amendments of 1967[2], or

(ii) who dies after such date without being entitled to benefits under section 202(a) or 223, or

(iii) whose primary insurance amount is required to be recomputed under section 215(f)(2) or (6) or section 231.

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[1] P.L. 75-162.

[2] January 2, 1968 [P.L. 90-248; 81 Stat. 821].

(3) The provisions of this subsection as in effect prior to the enactment of the Social Security Amendments of 1967[1] shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967[2]) and section 220.

(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.

(5) In the case of an individual whose primary insurance amount is not computed under paragraph (1) of subsection (a) by reason of paragraph (4)(B)(ii) of that subsection, who—

(A) attains age 62 after 1985 (except where he or she became entitled to a disability insurance benefit before 1986, and remained so entitled in any of the 12 months immediately preceding his or her attainment of age 62), or

(B) would attain age 62 after 1985 and becomes eligible for a disability insurance benefit after 1985,

and who first becomes eligible after 1985 for a monthly periodic payment (including a payment determined under subsection (a)(7)(C), but excluding a payment under the Railroad Retirement Act of 1974[3] or 1937[4]) which is based (in whole or in part) upon his or her earnings in noncovered service, the primary insurance amount of such individual during his or her concurrent entitlement to such monthly periodic payment and to old-age or disability insurance benefits shall be the primary insurance amount computed or recomputed under this subsection (without regard to this paragraph and before the application of subsection (i)) reduced by an amount equal to the smaller of—

(i) one-half of the primary insurance amount (computed without regard to this paragraph and before the application of subsection (i)), or

(ii) one-half of the portion of the monthly periodic payment (or payment determined under subsection (a)(7)(C)) which is attributable to noncovered service performed after 1956 (with such attribution being based on the proportionate number of years of such noncovered service) and to which that individual is entitled (or is deemed to be entitled) for the initial month of his or her eligibility for old-age or disability insurance benefits.

This paragraph shall not apply in the case of any individual to whom subsection (a)(7) would not apply by reason of subparagraph (E) or the first sentence of subparagraph (D) thereof.[5]

Certain Wages and Self-Employment Income Not To Be Counted

(e) For the purposes of subsections (b) and (d)—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior

[1] January 2, 1968 [P.L. 90-248; 81 Stat. 821].
[2] P.L. 90-248.
[3] P.L. 75-162 [as amended by P.L. 93-445].
[4] P.L. 75-162.
[5] P.L. 98-21, §113(b), added paragraph (5), effective April 20, 1983.

to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 230) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective, (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A)) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 212); and

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under section 215(a) as in effect prior to January 1979, average monthly wage, computed under subsection (b) or for the purposes of subsection (d) is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

Recomputation of Benefits

(f)(1) After an individual's primary insurance amount has been determined under this section, there shall be no recomputation of such individual's primary insurance amount except as provided in this subsection or, in the case of a World War II veteran who died prior to July 27, 1954, as provided in section 217(b).

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulation prescribe, recompute the individual's primary insurance account[1] for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) for purposes of clauses (i) and (ii) of subsection (a)(1)(A), the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B), would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii); and subsection (b)(3)(A) shall apply with respect to any such recomputation as it applied in

[1]As in original. Should be "amount".

the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

[(3) Repealed.[1]]

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

(5) In the case of a man who became entitled to old-age insurance benefits and died before the month in which he attained retirement age (as defined in section 216(l))[2], the Secretary shall recompute his primary insurance amount as provided in subsection (a) as though he became entitled to old-age insurance benefits in the month in which he died; except that (i) his computation base years referred to in subsection (b)(2) shall include the year in which he died, and (ii) his elapsed years referred to in subsection (b)(3) shall not include the year in which he died or any year thereafter. Such recomputation of such primary insurance amount shall be effective for and after the month in which he died.

(6) Upon the death after 1967 of an individual entitled to benefits under section 202(a) or section 223, if any person is entitled to monthly benefits or a lump-sum death payment, on the wages and self-employment income of such individual, the Secretary shall recompute the decedent's primary insurance amount, but only if the decedent during his lifetime was paid compensation which was treated under section 205(o) as remuneration for employment.

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) as in effect (without regard to the table in subsection (a)) in that month, and, where appropriate, under subsection (d) as in effect in December 1977. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) where applicable[3].[4]

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[1] P.L. 95-216, §201(f)(2); 91 Stat. 1521.

[2] P.L. 98-21, §201(c)(1)(C), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3] P.L. 97-123, §2(b)(1), inserted "and (effective January 1982) the recomputation shall be modified by the application of subsection (a)(6) where applicable". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[4] P.L. 97-35, §2201(c)(4), added the following new sentence: "The recomputation shall be modified by the application of section 215(a)(6), where applicable.", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

P.L.97-123, §2(b)(2), struck out "The recomputation shall be modified by the application of section

(8) The Secretary shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i)[1]. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i).

(9)(A) In the case of an individual who becomes entitled to a periodic payment determined under subsection (a)(7)(A) (including a payment determined under subsection (a)(7)(C)) in a month subsequent to the first month in which he or she becomes entitled to an old-age or disability insurance benefit, and whose primary insurance amount has been computed without regard to either such subsection or subsection (d)(5), such individual's primary insurance amount shall be recomputed (notwithstanding paragraph (4) of this subsection), in accordance with either such subsection or subsection (d)(5), as may be applicable, effective with the first month of his or her concurrent entitlement to such benefit and such periodic payment.

(B) If an individual's primary insurance amount has been computed under subsection (a)(7) or (d)(5), and it becomes necessary to recompute that primary insurance amount under this subsection—

(i) so as to increase the monthly benefit amount payable with respect to such primary insurance amount (except in the case of the individual's death), such increase shall be determined as though such primary insurance amount had initially been computed without regard to subsection (a)(7) or (d)(5), or

(ii) by reason of the individual's death, such primary insurance amount shall be recomputed without regard to (and as though it had never been computed with regard to) subsection (a)(7) or (d)(5).[2]

Rounding of Benefits[3]

(g) The amount of any monthly benefit computed under section 202 or 223 which (after any reduction under sections 203(a) and 224 and any deduction under section 203(b), and after any deduction under section 1840(a)(1)) is not a multiple of $1 shall be rounded to the next lower multiple of $1.

(h)(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, United States Code, remuneration paid for service to which the provisions of section 210(l)(1) of this Act are applicable and which is performed by an individual as a commissioned officer of the

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215(a)(6), where applicable.". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[1]P.L. 97-35, §2201(b)(4), struck out "(a)(1)(C)(i)(II)" and substituted "(a)(1)(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[2]P.L. 98-21, §113(c), added paragraph (9), effective April 20, 1983.

[3]P.L. 97-35, §2206(a), amended subsection (g) in its entirety, effective with respect to initial calculations and adjustments in primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this title, on the basis of his wages and self-employment income, for any month after June 1960 and prior to the first month with respect to which the Civil Service Commission[1] certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5, United States Code, on the basis of such service.

(2) In the case of a monthly benefit for a month prior to that in which the individual, on whose wages and self-employment income such benefit is based, dies, the waiver must be filed by such individual; and such waiver shall be irrevocable and shall constitute a waiver on behalf of himself, his wife, and his children. If such individual did not file such a waiver before he died, then in the case of a benefit for the month in which he died or any month thereafter, such waiver must be filed by his widow, if any, and by or on behalf of all his children, if any; and such waivers shall be irrevocable. Such a waiver by a child shall be filed by his legal guardian or guardians, or, in the absence thereof, by the person (or persons) who has the child in his care.

Cost-of-Living Increases in Benefits[2]

(i)(1) For purposes of this subsection—

(A) the term "base quarter" means (i) the calendar quarter ending on September 30[3] in each year after 1982[4], or (ii) any other calendar quarter in which occurs the effective month of a general benefit increase under this title;

(B) the term "cost-of-living computation quarter" means a base quarter, as defined in subparagraph (A)(i), with respect to which the applicable increase percentage is 3 percent or more[5]; except that there shall be no cost-of-living computation quarter in any calendar year if in the year prior to such year a law has been enacted providing a general benefit increase under this title or if in such prior year such a general benefit increase becomes effective;

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[1]These functions of the Civil Service Commission were transferred, effective January 1, 1979, to the Director of the Office of Personnel Management under section 102 of Reorganization Plan No. 2, of 1978, 5 U.S.C. 1101 note.

[2]See P.L. 93-233, [Social Security Benefits—Increase], §3(i), with respect to the relationship between §215(i) and §§203(f)(8) and 230(a) of the Act.

See P.L. 98-21, "Social Security Amendments of 1983", §111(d), with respect to "base quarter" and "cost-of-living computation quarter" as those terms apply in the calendar year 1983.

[3]P.L. 98-21, §111(b)(1), struck out "March 31" and substituted "September 30", effective with respect to cost-of-living increases determined under §215(i) for years after 1983.

P.L. 98-21, §111(b)(2), with respect to §215(i)(1)(A) as in effect in December 1978, and as applied in certain cases under the provisions of the Act as in effect after December 1978, made the identical change, effective as of the identical time.

[4]P.L. 98-21, §111(b)(1), struck out "1974" and substituted "1982", effective with respect to cost-of-living increases determined under §215(i) for years after 1983.

P.L. 98-21, §111(b)(2), with respect to §215(i)(1)(A) as in effect in December 1978, and as applied in certain cases under the provisions of the Act as in effect after December 1978, made the identical change, effective as of the identical time.

[5]P.L. 98-21, §112(a)(1), struck out "in which the Consumer Price Index prepared by the Department of Labor exceeds, by not less than 3 per centum, such Index in the later of (i) the last prior cost-of-living computation quarter which was established under this subparagraph, or (ii) the most recent calendar quarter in which occurred the effective month of a general benefit increase under this title" and substituted "with respect to which the applicable increase percentage is 3 percent or more", effective with respect to monthly benefits under Title II of the Act for months after December 1983.

(C) the term "applicable increase percentage" means—

(i) with respect to a base quarter or cost-of-living computation quarter in any calendar year before 1984, or in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is 15.0 percent or more, or in any calendar year after 1988 for which the OASDI fund ratio is 20.0 percent or more, the CPI increase percentage; and

(ii) with respect to a base quarter or cost-of-living computation quarter in any calendar year after 1983 and before 1989 for which the OASDI fund ratio is less than 15.0 percent, or in any calendar year after 1988 for which the OASDI fund ratio is less than 20.0 percent, the CPI increase percentage or the wage increase percentage, whichever (with respect to that quarter) is the lower;[1]

(D) the term "CPI increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the Consumer Price Index for that quarter (as prepared by the Department of Labor) exceeds such index for the most recent prior calendar quarter which was a base quarter under subparagraph (A)(ii) or, if later, the most recent cost-of-living computation quarter under subparagraph (B);[2]

(E) the term "wage increase percentage", with respect to a base quarter or cost-of-living computation quarter in any calendar year, means the percentage (rounded to the nearest one-tenth of 1 percent) by which the SSA average wage index for the year immediately preceding such calendar year exceeds such index for the year immediately preceding the most recent prior calendar year which included a base quarter under subparagraph (A)(ii) or, if later, which included a cost-of-living computation quarter;[3]

(F) the term "OASDI fund ratio", with respect to any calendar year, means the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund as of the beginning of such year, including the taxes transferred under section 201(a) on the first day of such year and reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Fund from the Federal Hospital Insurance Trust Fund under section 201(l), to

(ii) the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during such calendar year for all purposes authorized by section 201 (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 201(l)), but excluding any transfer payments between such trust funds and reducing the

[1]P.L. 98-21, §112(a)(4), added the preceding subparagraph, effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[2]P.L. 98-21, §112(a)(4), added the preceding subparagraph, effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[3]P.L. 98-21, §112(a)(4), added the preceding subparagraph, effective with respect to monthly benefits under Title II of the Act for months after December 1983.

amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account;[1]

(G) the term "SSA average wage index", with respect to any calendar year, means the average of the total wages reported to the Secretary of the Treasury or his delegate as determined for purposes of subsection (b)(3)(A)(ii); and[2]

(H)[3] the Consumer Price Index for a base quarter, a cost-of-living computation quarter, or any other calendar quarter shall be the arithmetical mean of such index for the 3 months in such quarter.

(2)(A)(i) The Secretary shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the month of December[4] of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 227 or 228,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this title[5], and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 203 (and such total shall be increased, unless otherwise so increased under another provision of this title, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 203 as in effect in December 1978, except as provided by section 203(a)(7) and (8) as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the applicable increase percentage[6]; and any amount so increased that is

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[1]P.L. 98-21, §112(a)(4), added the preceding subparagraph, effective with respect to monthly benefits under Title II of the Act for months after December 1983.

See P.L. 98-21, "Social Security Amendments of 1983", §112(f), with respect to the "OASDI fund ratio" for the calendar year 1984.

[2]P.L. 98-21, §112(a)(4), added the preceding subparagraph, effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[3]P.L. 98-21, §112(a)(3), redesignated subparagraph (C) as subparagraph (H), effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[4]P.L. 98-21, §111(a)(1), struck out "June" and substituted "December", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

P.L. 98-21, §111(a)(6), with respect to §215(i)(2) as in effect in December 1978, and as applied in certain cases under the provisions of the Act as in effect after December 1978, made the identical change, effective as of the identical time.

[5]P.L. 97-35, §2201(b)(5), struck out "(including a primary insurance amount determined under subsection (a)(1)(C)(i)(I), but subject to the provisions of such subsection (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[6]P.L. 98-21, §112(b), struck out "same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph

not a multiple of $0.10 shall be decreased to the next lower[1] multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i)[2] of subsection (a)(1) shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Secretary under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this title[3] and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph (as then in effect)[4]) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after November[5] of that year.

[(iv), (v) Stricken.[6]]

(B) The increase provided by subparagraph (A) with respect to a particular cost-of-living computation quarter shall apply in the case of monthly benefits under this title for months after November[7] of

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(1)(B)" and substituted "applicable increase percentage", effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[1]P.L. 97-35, §2206(b)(6), struck out "increased to the next higher" and substituted "decreased to the next lower", effective with respect to initial calculations and adjustments of primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[2]P.L. 97-35, §2201(b)(6), struck out "(C)(i)(II)" and substituted "(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]P.L. 97-35, §2201(b)(7), struck out "and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I), subject to the provisions of subsection (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981, and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-123, §2(c), inserted "and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) in the case of an individual to whom that subsection (as in effect in December 1981) applied, subject to the provisions of subsection (a)(1)(C)(i) and clauses (iv) and (v) of this subparagraph (as then in effect)". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[5]P.L. 98-21, §111(a)(2), struck out "May" and substituted "November", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

[6]P.L. 97-35, §2201(b)(8), struck out clauses (iv) and (v), effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II after October 1981, and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[7]P.L. 98-21, §111(a)(3), struck out "May" and substituted "November", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

P.L. 98-21, §111(a)(6), with respect to §215(i)(2) as in effect in December 1978, and as applied in certain cases under the provisions of the Act as in effect after December 1978, made the identical change, effective as of the identical time.

the calendar year in which occurred such cost-of-living computation quarter, and in the case of lump-sum death payments with respect to deaths occurring after November[1] of such calendar year.

(C)(i) Whenever the level of the Consumer Price Index as published for any month exceeds by 2.5 percent or more the level of such index for the most recent base quarter (as defined in paragraph (1)(A)(ii)) or if later, the most recent cost-of-living computation quarter, the Secretary shall (within 5 days after such publication) report the amount of such excess to the House Committee on Ways and Means and the Senate Committee on Finance.

(ii) Whenever the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance of such determination within 30 days after the close of such quarter, indicating the amount of the benefit increase to be provided, his estimate of the extent to which the cost of such increase would be met by an increase in the contribution and benefit base under section 230 and the estimated amount of the increase in such base, the actuarial estimates of the effect of such increase, and the actuarial assumptions and methodology used in preparing such estimates.

(iii) The Secretary shall determine and promulgate the OASDI fund ratio for the current calendar year and the SSA wage index for the preceding calendar year before November 1 of the current calendar year, based upon the most recent data then available, and shall include a statement of such fund ratio and wage index (and of the effect such ratio and the level of such index may have upon benefit increases under this subsection) in any notification made under clause (ii) and any determination published under subparagraph (D).[2]

(D) If the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. He shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i)[3] of subsection (a)(1) (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i)[4] under this subsection), or specified in subsection

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[1]P.L. 98-21, §111(a)(3), struck out "May" and substituted "November", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

P.L. 98-21, §111(a)(6), with respect to §215(i)(2) as in effect in December 1978, and as applied in certain cases under the provisions of the Act as in effect after December 1978, made the identical change, effective as of the identical time.

[2]P.L. 98-21, §112(d)(1), added clause (iii), effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[3]P.L. 97-35, §2201(b)(9), struck out "(C)(i)(II)" and substituted "(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[4]P.L. 97-35, §2201(b)(9), struck out "(C)(i)(II)" and substituted "(C)(i)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

(a)(3) as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 203(a) except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)). Notwithstanding the preceding sentence, such revision of maximum family benefits shall be subject to paragraph (6) of section 203(a) (as added by section 101(a)(3) of the Social Security Disability Amendments of 1980[1]).

(3) As used in this subsection, the term "general benefit increase under this title" means an increase (other than an increase under this subsection) in all primary insurance amounts on which monthly insurance benefits under this title are based.

(4) This subsection as in effect in December 1978[2], and as amended by sections 111(a)(6), 111(b)(2), and 112[3] of the Social Security Amendments of 1983[4],[5] shall continue to apply to subsections (a) and (d), as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a), as in effect after December 1978[6], does not apply (including an individual to whom subsection (a) does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)), except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase "increased to the next higher multiple of $0.10" shall be deemed to read "decreased to the next lower multiple of $0.10".[7] For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a), as in effect in December 1978[8],

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P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[1]P.L. 96-265, approved June 9, 1980; 94 Stat. 441.

[2]P.L. 97-35, §2201(c)(5), inserted ", modified by the application of subsection (a)(6),", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(d), struck out ", modified by the application of subsection (a)(6),". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[3]P.L. 98-21, §112(d)(2), struck out "section 111(a)(6) and (b)(2)" and substituted "sections 111(a)(6), 111(b)(2), and 112", effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[4]P.L.98-21, approved April 20, 1983; 97 Stat. 65.

[5]P.L. 98-21, §111(c), inserted ", and as amended by section 111(a)(6) and (b)(2) of the Social Security Amendments of 1983,", effective April 20, 1983.

[6]P.L. 97-35, §2201(c)(5), inserted ", modified by the application of subsection (a)(6),", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(d), struck out ", modified by the application of subsection (a)(6),". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[7]P.L. 97-35, §2206(b)(7), inserted ", except that for this purpose, in applying paragraphs (2)(A)(ii), (2)(D)(iv), and (2)(D)(v) of this subsection as in effect in December 1978, the phrase 'increased to the next higher multiple of $0.10' shall be deemed to read 'decreased to the next lower multiple of $0.10'", effective with respect to initial calculations and adjustments in primary insurance amounts and benefit amounts which are attributable to periods after August 1981.

[8]P.L. 97-35, §2201(c)(5), inserted ", modified by the application of subsection (a)(6),", effective with

as required by paragraph (2)(D) of this subsection as then in effect

(5)(A) If—

(i) with respect to any calendar year the "applicable increase percentage" was determined under clause (ii) of paragraph (1)(C) rather than under clause (i) of such paragraph, and the increase becoming effective under paragraph (2) in such year was accordingly determined on the basis of the wage increase percentage rather than the CPI increase percentage (or there was no such increase becoming effective under paragraph (2) in that year because the wage increase percentage was less than 3 percent), and

(ii) for any subsequent calendar year in which an increase under paragraph (2) becomes effective the OASDI fund ratio is greater than 32.0 percent,

then each of the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii), as increased under paragraph (2) effective with the month of December in such subsequent calendar year, shall be further increased (effective with such month) by an additional percentage, which shall be determined under subparagraph (B) and shall apply as provided in subparagraph (C).

(B) The applicable additional percentage by which the amounts described in subdivisions (I), (II), and (III) of paragraph (2)(A)(ii) are to be further increased under subparagraph (A) in the subsequent calendar year involved shall be the amount derived by—

(i) subtracting (I) the compounded percentage benefit increases that were actually paid under paragraph (2) and this paragraph from (II) the compounded percentage benefit increases that would have been paid if all increases under paragraph (2) had been made on the basis of the CPI increase percentage,

(ii) dividing the difference by the sum of the compounded percentage in subdivision (I) and 100 percent, and

(iii) multiplying such quotient by 100 and rounding to the nearest one-tenth of 1 percent,

with the compounded increases referred to in subdivisions (I) and (II) being measured—

(iv) in the case of amounts described in subdivision (I) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which monthly benefits described in such subdivision were first increased on the basis of the wage increase percentage and ending with such subsequent calendar year, and

(v) in the case of amounts described in subdivisions (II) and (III) of paragraph (2)(A)(ii), over the period beginning with the calendar year in which the individual whose primary insurance amount is increased under such subdivision (II) initially became eligible for an old-age or disability insurance benefit, or died before becoming so eligible, and ending with such subsequent calendar year;

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respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(d), struck out ", modified by the application of subsection (a)(6),". For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[1]See P.L. 95-588, §306, with respect to the requirement for simultaneous publication by Veterans Administration of annual income limitations.

except that if the Secretary determines in any case that the application (in accordance with subparagraph (C)) of the additional percentage as computed under the preceding provisions of this subparagraph would cause the OASDI fund ratio to fall below 32.0 percent in the calendar year immediately following such subsequent year, he shall reduce such applicable additional percentage to the extent necessary to ensure that the OASDI fund ratio will remain at or above 32.0 percent through the end of such following year.

(C) Any applicable additional percentage increase in an amount described in subdivision (I), (II), or (III) of paragraph (2)(A)(ii), made under this paragraph in any calendar year, shall thereafter be treated for all the purposes of this Act as a part of the increase made in such amount under paragraph (2) for that year.[1]

OTHER DEFINITIONS

SEC. 216. [42 U.S.C. 416] For the purposes of this title—

Spouse; Surviving Spouse[2]

(a)(1) The term "spouse" means a wife as defined in subsection (b) or a husband as defined in subsection (f).

(2) The term "surviving spouse" means a widow as defined in subsection (c) or a widower as defined in subsection (g).

Wife

(b) The term "wife" means the wife of an individual, but only if she (1) is the mother of his son or daughter, (2) was married to him for a period of not less than one year immediately preceding the day on which her application is filed, or (3) in the month prior to the month of her marriage to him (A) was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974[3], as amended. For purposes of clause (2), a wife shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of her marriage to such individual.[4] For purposes of subparagraph (C) of section 202(b)(1), a divorced wife shall be deemed not to be married throughout the month in which she becomes divorced.[5]

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[1]P.L. 98-21, §112(c), added paragraph (5), effective with respect to monthly benefits under Title II of the Act for months after December 1983.

[2]P.L. 98-21, §304(c), added subsection (a), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 75-162, [as amended by P.L. 93-445].

[4]P.L. 97-35, §2203(b)(2), added the preceding sentence, effective with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

[5]P.L. 97-35, §2203(b)(2), added the preceding sentence, effective with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

Widow

(c) The term "widow" (except when used in the first sentence of[1] section 202(i)) means the surviving wife of an individual, but only if (1) she is the mother of his son or daughter, (2) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (3) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of eighteen, (4) she was married to him at the time both of them legally adopted a child under the age of eighteen, (5) she was married to him for a period of not less than nine months immediately prior to the day on which he died, or (6) in the month prior to the month of her marriage to him (A) she was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (b), (e), or (h) of section 202, (B) she had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) she was entitled to, or upon application therefor and attainment of the required age (if any) would have been entitled to, a widow's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974[2], as amended.

Divorced Spouses; Divorce[3]

(d)(1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means a woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.

(3) The term "surviving divorced mother" means a woman divorced from an individual who has died, but only if (A) she is the mother of his son or daughter, (B) she legally adopted his son or daughter while she was married to him and while such son or daughter was under the age of 18, (C) he legally adopted her son or daughter while she was married to him and while such son or daughter was under the age of 18, or (D) she was married to him at the time both of them legally adopted a child under the age of 18.

(4) The term "divorced husband" means a man divorced from an individual, but only if he had been married to such individual for a period of 10 years immediately before the date the divorce became effective.[4]

(5) The term "surviving divorced husband" means a man divorced from an individual who has died, but only if he had been married to the individual for a period of 10 years immediately before the divorce became effective.[5]

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[1] P.L. 97-35, §2202(a)(2)(A), inserted "the first sentence of", effective only with respect to deaths occurring after August 1981.

[2] P.L. 75-162 [as amended by P.L. 93-445].

[3] P.L. 98-21, §301(c)(2), struck out "Divorced Wives; Divorce" and substituted "Divorced Spouses; Divorce", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] P.L. 98-21, §301(c)(1), added the preceding paragraph, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5] P.L. 98-21, §301(c)(1), added the preceding paragraph, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

(6) The term "surviving divorced father" means a man divorced from an individual who has died, but only if (A) he is the father of her son or daughter, (B) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of 18, (C) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of 18, or (D) he was married to her at the time both of them legally adopted a child under the age of 18.[1]

(7) The term "surviving divorced parent" means a surviving divorced mother as defined in paragraph (3) of this subsection or a surviving divorced father as defined in paragraph (6).[2]

(8)[3] The terms "divorce" and "divorced" refer to a divorce a vinculo matrimonii.

Child

(e) The term "child" means (1) the child or legally adopted child of an individual, (2) a stepchild who has been such stepchild for not less than one year immediately preceding the day on which application for child's insurance benefits is filed or (if the insured individual is deceased) not less than nine months immediately preceding the day on which such individual died, and (3) a person who is the grandchild or stepgrandchild of an individual or his spouse, but only if (A) there was no natural or adoptive parent (other than such a parent who was under a disability, as defined in section 223(d)) of such person living at the time (i) such individual became entitled to old-age insurance benefits or disability insurance benefits or died, or (ii) if such individual had a period of disability which continued until such individual became entitled to old-age insurance benefits or disability insurance benefits, or died, at the time such period of disability began, or (B) such person was legally adopted after the death of such individual by such individual's surviving spouse in an adoption that was decreed by a court of competent jurisdiction within the United States and such person's natural or adopting parent or stepparent was not living in such individual's household and making regular contributions toward such person's support at the time such individual died. For purposes of clause (1), a person shall be deemed, as of the date of death of an individual, to be the legally adopted child of such individual if such person was at the time of such individual's death living in such individual's household and was legally adopted by such individual's surviving spouse after such individual's death but only if (A) proceedings for the adoption of the child had been instituted by such individual before his death, or (B) such child was adopted by such individual's surviving spouse before the end of two years after (i) the day on which such individual died or (ii) the date of enactment of the Social Security Amendments of 1958[4]; except that this sen-

[1] P.L. 98-21, §306(c), added the preceding paragraph, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2] P.L. 98-21, §306(c), added the preceding paragraph, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §301(c)(1), redesignated this paragraph as paragraph (6), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

P.L. 98-21, §306(c), redesignated this paragraph as paragraph (8), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4] August 28, 1958 [P.L. 85-840; 72 Stat. 1013].

tence shall not apply if at the time of such individual's death such person was receiving regular contributions toward his support from someone other than such individual or his spouse, or from any public or private welfare organization which furnishes services or assistance for children. For purposes of clause (2), a person who is not the stepchild of an individual shall be deemed the stepchild of such individual if such individual was not the mother or adopting mother or the father or adopting father of such person and such individual and the mother or adopting mother, or the father or adopting father, as the case may be, of such person went through a marriage ceremony resulting in a purported marriage between them which, but for a legal impediment described in the last sentence of subsection (h)(1)(B), would have been a valid marriage. For purposes of clause (2), a child shall be deemed to have been the stepchild of an individual for a period of one year throughout the month in which occurs the expiration of such one year.[1] For purposes of clause (3), a person shall be deemed to have no natural or adoptive parent living (other than a parent who was under a disability) throughout the most recent month in which a natural or adoptive parent (not under a disability) dies.[2]

Husband

(f) The term "husband" means the husband of an individual, but only if (1) he is the father of her son or daughter, (2) he was married to her for a period of not less than one year immediately preceding the day on which his application is filed, or (3) in the month prior to the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c),[3] (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or upon application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974[4], as amended. For purposes of clause (2), a husband shall be deemed to have been married to an individual for a period of one year throughout the month in which occurs the first anniversary of his marriage to her.[5]

Widower

(g) The term "widower" (except when used in the first sentence of[6]

[1]P.L. 97-35, §2203(d)(3), added the preceding sentence, effective with respect to monthly benefits for months after August 1981, and only in the case of individuals who were not entitled to such benefits for August 1981 or any preceding month.

[2]P.L. 97-35, §2203(d)(3), added the preceding sentence, effective with respect to monthly benefits for months after August 1981, and only in the case of individuals who were not entitled to such benefits for August 1981 or any preceding month.

[3]P.L. 98-21, §309(j), inserted "(c),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 75-162 [as amended by P.L. 93-445].

[5]P.L. 97-35, §2203(c)(2), added the preceding sentence, effective only with respect to monthly benefits payable to individuals who attain age 62 after August 1981.

[6]P.L. 97-35, §2202(a)(2)(B), inserted "the first sentence of", effective only with respect to deaths occurring after August 1981.

section 202(i)) means the surviving husband of an individual, but only if (1) he is the father of her son or daughter, (2) he legally adopted her son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (3) she legally adopted his son or daughter while he was married to her and while such son or daughter was under the age of eighteen, (4) he was married to her at the time both of them legally adopted a child under the age of eighteen, (5) he was married to her for a period of not less than nine months immediately prior to the day on which she died, or (6) in the month before the month of his marriage to her (A) he was entitled to, or on application therefor and attainment of age 62 in such prior month would have been entitled to, benefits under subsection (c),[1] (f) or (h) of section 202, (B) he had attained age eighteen and was entitled to, or on application therefor would have been entitled to, benefits under subsection (d) of such section (subject, however, to section 202(s)), or (C) he was entitled to, or on application therefor and attainment of the required age (if any) he would have been entitled to, a widower's, child's (after attainment of age 18), or parent's insurance annuity under section 2 of the Railroad Retirement Act of 1974[2], as amended.

Determination of Family Status

(h)(1)(A) An applicant is the wife, husband, widow, or widower of a fully or currently insured individual for purposes of this title if the courts of the State in which such insured individual is domiciled at the time such applicant files an application, or, if such insured individual is dead, the courts of the State in which he was domiciled at the time of death, or, if such insured individual is or was not so domiciled in any State, the courts of the District of Columbia, would find that such applicant and such insured individual were validly married at the time such applicant files such application or, if such insured individual is dead, at the time he died. If such courts would not find that such applicant and such insured individual were validly married at such time, such applicant shall, nevertheless be deemed to be the wife, husband, widow, or widower, as the case may be, of such insured individual if such applicant would, under the laws applied by such courts in determining the devolution of intestate personal property, have the same status with respect to the taking of such property as a wife, husband, widow, or widower of such insured individual.

(B) In any case where under subparagraph (A) an applicant is not (and is not deemed to be) the wife, widow, husband, or widower of a fully or currently insured individual, or where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual, but it is established to the satisfaction of the Secretary that such applicant in good faith went through a marriage ceremony with such individual resulting in a purported marriage between them which, but for a legal impediment not known to the applicant at the time of such ceremony, would have been a valid marriage, and such applicant and the insured individual were

[1]P.L. 98-21, §309(k), inserted "(c),", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 75-162 [as amended by P.L. 93-445].

living in the same household at the time of the death of such insured individual or (if such insured individual is living) at the time such applicant files the application, then, for purposes of subparagraph (A) and subsections (b), (c), (f), and (g), such purported marriage shall be deemed to be a valid marriage. The provisions of the preceding sentence shall not apply (i) if another person is or has been entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual and such other person is (or is deemed to be) a wife, widow, husband, or widower of such insured individual under subparagraph (A) at the time such applicant files the application, or (ii) if the Secretary determines, on the basis of information brought to his attention, that such applicant entered into such purported marriage with such insured individual with knowledge that it would not be a valid marriage. The entitlement to a monthly benefit under subsection (b), (c), (e), (f), or (g) of section 202, based on the wages and self-employment income of such insured individual, of a person who would not be deemed to be a wife, widow, husband, or widower of such insured individual but for this subparagraph, shall end with the month before the month (i) in which the Secretary certifies, pursuant to section 205(i), that another person is entitled to a benefit under subsection (b), (c), (e), (f), or (g) of section 202 on the basis of the wages and self-employment income of such insured individual, if such other person is (or is deemed to be) the wife, widow, husband, or widower of such insured individual under subparagraph (A), or (ii) if the applicant is entitled to a monthly benefit under subsection (b) or (c) of section 202, in which such applicant entered into a marriage, valid without regard to this subparagraph, with a person other than such insured individual. For purposes of this subparagraph, a legal impediment to the validity of a purported marriage includes only an impediment (i) resulting from the lack of dissolution of a previous marriage or otherwise arising out of such previous marriage or its dissolution, or (ii) resulting from a defect in the procedure followed in connection with such purported marriage.

(2)(A) In determining whether an applicant is the child or parent of a fully or currently insured individual for purposes of this title, the Secretary shall apply such law as would be applied in determining the devolution of intestate personal property by the courts of the State in which such insured individual is domiciled at the time such applicant files application, or, if such insured individual is dead, by the courts of the State in which he was domiciled at the time of his death, or, if such insured individual is[1] or was not so domiciled in any State, by the courts of the District of Columbia. Applicants who according to such law would have the same status relative to taking intestate personal property as a child or parent shall be deemed such.

(B) If an applicant is a son or daughter of a fully or currently insured individual but is not (and is not deemed to be) the child of such insured individual under subparagraph (A), such applicant shall nevertheless be deemed to be the child of such insured individual if such insured individual and the mother or father, as the case may be, of such applicant went through a marriage ceremony resulting in

[1]As in original; "not" omitted.

a purported marriage between them which, but for a legal impediment described in the last sentence of paragraph (1)(B), would have been a valid marriage.

(3) An applicant who is the son or daughter of a fully or currently insured individual, but who is not (and is not deemed to be) the child of such insured individual under paragraph (2), shall nevertheless be deemed to be the child of such insured individual if:

(A) in the case of an insured individual entitled to old-age insurance benefits (who was not, in the month preceding such entitlement, entitled to disability insurance benefits)—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her[1] son or daughter,

(II) has been decreed by a court to be the mother or[2] father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her[3] son or daughter,

and such acknowledgement, court decree, or court order was made not less than one year before such insured individual became entitled to old-age insurance benefits or attained retirement age (as defined in section 216(l))[4], whichever is earlier; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or[5] father of the applicant and was living with or contributing to the support of the applicant at the time such applicant's application for benefits was filed[6];

(B) in the case of an insured individual entitled to disability insurance benefits, or who was entitled to such benefits in the month preceding the first month for which he or she[7] was entitled to old-age insurance benefits—

(i) such insured individual—

(I) has acknowledged in writing that the applicant is his or her[8] son or daughter,

(II) has been decreed by a court to be the mother or[9] father of the applicant, or

(III) has been ordered by a court to contribute to the support of the applicant because the applicant is his or her[10] son or daughter,

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[1]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §201(c)(1)(D), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[5]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §303(b), struck out "insured individual became entitled to benefits or attained age 65, whichever first occurred" and substituted "applicant's application for benefits was filed", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §303(d)(2), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable

and such acknowledgement, court decree, or court order was made before such insured individual's most recent period of disability began; or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to be the mother or[1] father of the applicant and was living with or contributing to the support of that applicant at the time such applicant's application for benefits was filed[2];

(C) in the case of a deceased individual—

(i) such insured individual—

(I) had acknowledged in writing that the applicant is his or her[3] son or daughter,

(II) had been decreed by a court to be the mother or[4] father of the applicant, or

(III) had been ordered by a court to contribute to the support of the applicant because the applicant was his or her[5] son or daughter,

and such acknowledgement, court decree, or court order was made before the death of such insured individual, or

(ii) such insured individual is shown by evidence satisfactory to the Secretary to have been the mother or[6] father of the applicant, and such insured individual was living with or contributing to the support of the applicant at the time such insured individual died.

For purposes of subparagraphs (A)(i) and (B)(i)[7], an acknowledgement, court decree, or court order shall be deemed to have occurred on the first day of the month in which it actually occurred.[8]

Disability; Period of Disability

(i)(1) Except for purposes of sections 202(d), 202(e), 202(f), 223, and 225, the term "disability" means (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or has lasted or can be expected to last for a continuous period of not less than 12 months, or (B) blindness; and the term "blindness" means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be

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under Title II of the Act for months after April 1983.

[1]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §303(c), struck out "period of disability began" and substituted "applicant's application for benefits was filed", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §303(d)(1), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §303(a), inserted "mother or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §333(a), struck out "subparagraph (A)(i)" and substituted "subparagraphs (A)(i) and (B)(i)", effective April 20, 1983.

[8]P.L. 97-35, §2203(d)(4), added the preceding sentence to §216(h)(3), effective with respect to monthly benefits for months after August 1981, and only in the case of individuals who were not entitled to such benefits for August 1981 or any preceding month.

considered for purposes of this paragraph as having a central visual acuity of 20/200 or less. The provisions of paragraphs (2)(A), (3), (4), (5), and (6) of section 223(d) shall be applied for purposes of determining whether an individual is under a disability within the meaning of the first sentence of this paragraph in the same manner as they are applied for purposes of paragraph (1) of such section. Nothing in this title shall be construed as authorizing the Secretary or any other officer or employee of the United States to interfere in any way with the practice of medicine or with relationships between practitioners of medicine and their patients, or to exercise any supervision or control over the administration or operation of any hospital.

(2)(A) The term "period of disability" means a continuous period (beginning and ending as hereinafter provided in this subsection) during which an individual was under a disability (as defined in paragraph (1)), but only if such period is of not less than five full calendar months' duration or such individual was entitled to benefits under section 223 for one or more months in such period.

(B) No period of disability shall begin as to any individual unless such individual files an application for a disability determination with respect to such period; and no such period shall begin as to any individual after such individual attains the retirement age (as defined in section 216(l))[1]. In the case of a deceased individual, the requirement of an application under the preceding sentence may be satisfied by an application for a disability determination filed with respect to such individual within 3 months after the month in which he died.

(C) A period of disability shall begin—

(i) on the day the disability began, but only if the individual satisfies the requirements of paragraph (3) on such day; or

(ii) if such individual does not satisfy the requirements of paragraph (3) on such day, then on the first day of the first quarter thereafter in which he satisfies such requirements.

(D) A period of disability shall end with the close of whichever of the following months is the earlier: (i) the month preceding the month in which the individual attains retirement age (as defined in section 216(l))[2], or (ii) the month preceding (I) the termination month (as defined in section 223(a)(1)), or, if earlier (II) the first month for which no benefit is payable by reason of section 223(e), where no benefit is payable for any of the succeeding months during the 15-month period referred to in such section.

(E) Except as is otherwise provided in subparagraph (F), no application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined without regard to subparagraph (B) and this subparagraph) shall be accepted as an application for purposes of this paragraph.

(F) An application for a disability determination which is filed more than 12 months after the month prescribed by subparagraph (D) as the month in which the period of disability ends (determined

[1]P.L. 98-21, §201(c)(1)(D), struck out "age of 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[2]P.L. 98-21, §201(c)(1)(D), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

without regard to subparagraphs (B) and (E)) shall be accepted as an application for purposes of this paragraph if—

(i) in the case of an application filed by or on behalf of an individual with respect to a disability which ends after the month in which the Social Security Amendments of 1967 is enacted[1], such application is filed not more than 36 months after the month in which such disability ended, such individual is alive at the time the application is filed, and the Secretary finds in accordance with regulations prescribed by him that the failure of such individual to file an application for a disability determination within the time specified in subparagraph (E) was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application, and

(ii) in the case of an application filed by or on behalf of an individual with respect to a period of disability which ends in or before the month in which the Social Security Amendments of 1967 is enacted[2],[3]

(I) such application is filed not more than 12 months after the month in which the Social Security Amendments of 1967 is enacted[4],

(II) a previous application for a disability determination has been filed by or on behalf of such individual (1) in or before the month in which the Social Security Amendments of 1967 is enacted[5], and (2) not more than 36 months after the month in which his disability ended, and

(III) the Secretary finds in accordance with regulations prescribed by him, that the failure of such individual to file an application within the then specified time period was attributable to a physical or mental condition of such individual which rendered him incapable of executing such an application.

In making a determination under this subsection, with respect to the disability or period of disability of any individual whose application for a determination thereof is accepted solely by reason of the provisions of this subparagraph (F), the provisions of this subsection (other than the provisions of this subparagraph) shall be applied as such provisions are in effect at the time such determination is made.

(G) An application for a disability determination filed before the first day on which the applicant satisfies the requirements for a period of disability under this subsection shall be deemed a valid application (and shall be deemed to have been filed on such first day) only if the applicant satisfies the requirements for a period of disability before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made or, if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary).

(3) The requirements referred to in clauses (i) and (ii) of paragraph (2)(C) are satisfied by an individual with respect to any quarter only if—

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[1] January 1968 [P.L. 90-248; 81 Stat. 821].
[2] January 1968 [P.L. 90-248; 81 Stat. 821].
[3] As in original. Punctuation is questionable.
[4] January 1968 [P.L. 90-248; 81 Stat. 821].
[5] January 1968 [P.L. 90-248; 81 Stat. 821].

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such quarter; and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with such quarter, or

(ii) if such quarter ends before he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with such quarter and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of clause (ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with such quarter are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;[1]

except that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in paragraph (1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a prior period of disability unless such quarter was a quarter of coverage.

Periods of Limitation Ending on Nonwork Days

(j) Where this title, any provision of another law of the United States (other than the Internal Revenue Code of 1954[2]) relating to or changing the effect of this title, or any regulation issued by the Secretary pursuant thereto provides for a period within which an act is required to be done which affects eligibility for or the amount of any benefit or payment under this title or is necessary to establish or protect any rights under this title, and such period ends on a Saturday, Sunday, or legal holiday, or on any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order, then such act shall be considered as done within such period if it is done on the first day thereafter which is not a Saturday, Sunday, or legal holiday or any other day all or part of which is declared to be a nonwork day for Federal employees by statute or Executive order. For purposes of this subsection, the day on which a period ends shall include the day on which an extension of such period, as authorized by law or by the Secretary pursuant to law, ends. The provisions of this subsection shall not extend the period during which benefits under this title may (pursuant to

[1]P.L. 98-21, §332(a)(2), added clause (iii), effective with respect to applications for disability insurance benefits under §223 of the Act, and for disability determinations under §216(i) of the Act, filed after April 20, 1983, except that no monthly benefits under Title II of the Act shall be payable or increased by reason of this amendment for months before May 1983.

[2]P.L. 83-591.

section 202(j)(1) or 223(b)) be paid for months prior to the day application for such benefits is filed, or during which an application for benefits under this title may (pursuant to section 202(j)(2) or 223(b)) be accepted as such.

Waiver of Nine-Month Requirement for Widow, Stepchild, or Widower in Case of Accidental Death or in Case of Serviceman Dying in Line of Duty, or in Case of Remarriage to the Same Individual

(k) The requirement in clause (5) of subsection (c) or clause (5) of subsection (g) that the surviving spouse of an individual have been married to such individual for a period of not less than nine months immediately prior to the day on which such individual died in order to qualify as such individual's widow or widower, and the requirement in subsection (e) that the stepchild of a deceased individual have been such stepchild for not less than nine months immediately preceding the day on which such individual died in order to qualify as such individual's child, shall be deemed to be satisfied, where such individual dies within the applicable nine-month period, if—

(1) his death—

(A) is accidental, or

(B) occurs in line of duty while he is a member of a uniformed service serving on active duty (as defined in section 210(l)(2)),

unless the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months, or

(2)(A) the widow or widower of such individual had been previously married to such individual and subsequently divorced and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce; or

(B) the stepchild of such individual had been the stepchild of such individual during a previous marriage of such stepchild's parent to such individual which ended in divorce and such requirement would have been satisfied at the time of such divorce if such previous marriage had been terminated by the death of such individual at such time instead of by divorce;

except that paragraph (2) of this subsection shall not apply if the Secretary determines that at the time of the marriage involved the individual could not have reasonably been expected to live for nine months. For purposes of paragraph (1)(A) of this subsection, the death of an individual is accidental if he receives bodily injuries solely through violent, external, and accidental means and, as a direct result of the bodily injuries and independently of all other causes, loses his life not later than three months after the day on which he receives such bodily injuries.

Retirement Age[1]

(l)(1) The term "retirement age" means—

[1]P.L. 98-21, §201(a), added subsection (l), effective April 20, 1983.

(A) with respect to an individual who attains early retirement age (as defined in paragraph (2)) before January 1, 2000, 65 years of age;

(B) with respect to an individual who attains early retirement age after December 31, 1999, and before January 1, 2005, 65 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age;

(C) with respect to an individual who attains early retirement age after December 31, 2004, and before January 1, 2017, 66 years of age;

(D) with respect to an individual who attains early retirement age after December 31, 2016, and before January 1, 2022, 66 years of age plus the number of months in the age increase factor (as determined under paragraph (3)) for the calendar year in which such individual attains early retirement age; and

(E) with respect to an individual who attains early retirement age after December 31, 2021, 67 years of age.

(2) The term "early retirement age" means age 62 in the case of an old-age, wife's, or husband's insurance benefit, and age 60 in the case of a widow's or widower's insurance benefit.

(3) The age increase factor for any individual who attains early retirement age in a calendar year within the period to which subparagraph (B) or (D) of paragraph (1) applies shall be determined as follows:

(A) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2000 through 2004, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2000 and ending with December of the year in which the individual attains early retirement age.

(B) With respect to an individual who attains early retirement age in the 5-year period consisting of the calendar years 2017 through 2021, the age increase factor shall be equal to two-twelfths of the number of months in the period beginning with January 2017 and ending with December of the year in which the individual attains early retirement age.

BENEFITS IN CASE OF VETERANS

SEC. 217. [42 U.S.C. 417] (a)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after August 1950, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any World War II veteran, and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States during World War II. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran during World War II is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran during World War II, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service during World War II shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(b)(1) Any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 215(c) as in effect in December 1978[1]. Notwithstanding section 215(d) as in effect in

[1]P.L. 97-35, §2201(c)(7), inserted ", and as modified by the application of section 215(a)(6)", effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(g), struck out ", and as modified by the application of section 215(a)(6),". P.L. 97-

December 1978, the primary insurance benefit (for purposes of section 215(c) as in effect in December 1978) of such veteran shall be determined as provided in this title as in effect prior to the enactment of this section[1], except that the 1 per centum addition provided for in section 209(e)(2) of this Act as in effect prior to the enactment of this section[2] shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application;

(B) any pension or compensation is determined by the Veterans' Administration to be payable by it on the basis of the death of such veteran;

(C) the death of the veteran occurred while he was in the active military or naval service of the United States; or

(D) such veteran has been discharged or released from the active military or naval service of the United States subsequent to July 26, 1951.

(2) Upon an application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any World War II veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to paragraph (1)(B) of this subsection unless he has been notified by the Veterans' Administration that pension or compensation is determined to be payable by the Veterans' Administration by reason of the death of such veteran. The Secretary of Health, Education, and Welfare shall thereupon report such decision to the Veterans' Administration. If the Veterans' Administration in any such case has made an adjudication or thereafter makes an adjudication that any pension or compensation is payable under any law administered by it, it shall notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment, or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection. Any payment theretofore certified by the Secretary of Health, Education, and Welfare on the basis of paragraph (1) of this subsection to any individual, not exceeding the amount of any accrued pension or compensation payable to him by the Veterans' Administration, shall (notwithstanding the provisions of section 3101 of title 38, United States Code) be deemed to have been paid to him by such Administration on account of such accrued pension or compensation. No such payment certified by the Secretary of Health, Education, and Welfare, and no payment certified by him for any month prior to the first month for which any pension or compensation is paid by the Veterans' Administration shall be deemed by reason of this subsection to have been an erroneous payment.

(c) In the case of any World War II veteran to whom subsection (a) is applicable, proof of support required under section 202(h) may be filed by a parent at any time prior to July 1951 or prior to the expiration of two years after the date of the death of such veteran, whichever is the later.

123, §2(g), was executed as if no comma follows "215(a)(6)". For the effective date, see P.L. 97-123, §2(j)(2)-(j)(4), p. 787.

[1] August 28, 1950 [P.L. 81-734; 64 Stat. 477].

[2] August 28, 1950 [P.L. 81-734; 64 Stat. 477].

(d) For the purposes of this section—

(1) The term "World War II" means the period beginning with September 16, 1940, and ending at the close of July 24, 1947.

(2) The term "World War II veteran" means any individual who served in the active military or naval service of the United States at any time during World War II and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(e)(1) For purposes of determining entitlement to and the amount of any monthly benefit or lump-sum death payment payable under this title on the basis of the wages and self-employment income of any veteran (as defined in paragraph (4)), and for purposes of section 216(i)(3), such veteran shall be deemed to have been paid wages (in addition to the wages, if any, actually paid to him) of $160 in each month during any part of which he served in the active military or naval service of the United States on or after July 25, 1947, and prior to January 1, 1957. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon the active military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, is determined by any agency or wholly owned instrumentality of the United States (other than the Veterans' Administration) to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3). In the case of monthly benefits under this title for months after December 1956 (and any lump-sum death payment under this title with respect to a death occurring after December 1956) based on the wages and self-employment income of a veteran who performed service (as a member of a uniformed service) to which the provisions of section 210(l)(1) are applicable, wages which would, but for the provisions of clause (B), be deemed under this subsection to have been paid to such veteran with respect to his active military or naval service performed after December 1950 shall be deemed to have been paid to him with respect to such service notwithstanding the provisions of such clause, but only if the benefits referred to in such clause which are based (in whole or in part) on such service are payable solely by the Army, Navy, Air Force, Marine Corps, Coast

Guard[1], Coast and Geodetic Survey[2] or Public Health Service[3].

(2) Upon application for benefits or a lump-sum death payment on the basis of the wages and self-employment income of any veteran, the Secretary of Health, Education, and Welfare shall make a decision without regard to clause (B) of paragraph (1) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the military or naval service of such veteran on or after July 25, 1947, and prior to January 1, 1957, a benefit described in clause (B) of paragraph (1) has been determined by such agency or instrumentality to be payable by it. If he has not been so notified, the Secretary of Health, Education, and Welfare shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (1) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by paragraph (1) of this subsection.

(3) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on military or naval service on or after July 25, 1947, and prior to January 1, 1957, shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any veteran, such information as the Secretary deems necessary to carry out his functions under paragraph (2) of this subsection.

(4) For the purposes of this subsection, the term "veteran" means any individual who served in the active military or naval service of the United States at any time on or after July 25, 1947, and prior to January 1, 1957, and who, if discharged or released therefrom, was so discharged or released under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty; but such term shall not include any individual who died while in the active military or naval service of the United States if his death was inflicted (other than by an enemy of the United States) as lawful punishment for a military or naval offense.

(f)(1) In any case where a World War II veteran (as defined in subsection (d)(2)) or a veteran (as defined in subsection (e)(4)) has died or shall hereafter die, and his or her[4] surviving spouse[5] or child is entitled under subchapter III of chapter 83 of title 5, United States Code, to an annuity in the computation of which his or her[6] active military or naval service was included, clause (B) of subsection (a)(1)

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[1]Department of Transportation.

[2]Functions of the Coast and Geodetic Survey have since been transferred to the Secretary of Commerce and vested in the National Oceanic and Atmospheric Administration (NOAA) under Reorganization Plan No. 4 of 1970, effective October 3, 1970.

[3]Department of Health and Human Services.

[4]P.L. 98-21, §308(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §308(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

or clause (B) of subsection (e)(1) shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 202 which is based on his or her[1] wages and self-employment income; except that no such surviving spouse[2] or child shall be entitled under section 202 to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such surviving spouse[3] or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Civil Service Commission[4] certifies to the Secretary of Health, Education, and Welfare that (by reason of such waiver) no further annuity will be paid to such surviving spouse[5] or child under such subchapter III on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

(2) Whenever a surviving spouse[6] waives his or[7] her right to receive such annuity such waiver shall constitute a waiver on his or[8] her own behalf; a waiver by a legal guardian or guardians, or, in the absence of a legal guardian, the person (or persons) who has the child in his or her[9] care, of the child's right to receive such annuity shall constitute a waiver on behalf of such child. Such a waiver with respect to an annuity based on a veteran's service shall be valid only if the surviving spouse[10] and all children, or, if there is no surviving spouse[11], all the children, waive their rights to receive annuities under subchapter III of chapter 83 of title 5, United States Code, based on such veteran's military or civilian service.

Appropriation to Trust Funds[12]

(g)(1) Within thirty days after the date of the enactment of the Social Security Amendments of 1983[13], the Secretary shall determine the amount equal to the excess of—

(A) the actuarial present value as of such date of enactment of the past and future benefit payments from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund under this title and title XVIII, together with associated administrative costs, resulting from the operation of this section

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[1]P.L. 98-21, §308(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]Functions transferred to the Director of the Office of Personnel Management.

[5]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §308(2), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §308(2), inserted "his or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]P.L. 98-21, §308(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[10]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §308(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §151(a), amended subsection (g) in its entirety, effective April 20, 1983.

[13]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

(other than this subsection) and section 210 of this Act as in effect before the enactment of the Social Security Amendments of 1950[1], over

(B) any amounts previously transferred from the general fund of the Treasury to such Trust Funds pursuant to the provisions of this subsection as in effect immediately before the date of the enactment of the Social Security Amendments of 1983[2].

Such actuarial present value shall be based on the relevant actuarial assumptions set forth in the report of the Board of Trustees of each such Trust Fund for 1983 under sections 201(c) and 1817(b). Within thirty days after the date of the enactment of the Social Security Amendments of 1983[3], the Secretary of the Treasury shall transfer the amount determined under this paragraph with respect to each such Trust Fund to such Trust Fund from amounts in the general fund of the Treasury not otherwise appropriated.

(2) The Secretary shall revise the amount determined under paragraph (1) with respect to each such Trust Fund in 1985 and each fifth year thereafter, as determined appropriate by the Secretary from data which becomes available to him after the date of the determination under paragraph (1) on the basis of the amount of benefits and administrative expenses actually paid from such Trust Fund under this title or title XVIII and the relevant actuarial assumptions set forth in the report of the Board of Trustees of such Trust Fund for such year under section 201(c) or 1817(b). Within 30 days after any such revision, the Secretary of the Treasury, to the extent provided in advance in appropriation Acts, shall transfer to such Trust Fund, from amounts in the general fund of the Treasury not otherwise appropriated, or from such Trust Fund to the general fund of the Treasury, such amounts as the Secretary of the Treasury determines necessary to take into account such revision.

(h)(1) For the purposes of this section, any individual who the Secretary finds—

(A) served during World War II (as defined in subsection (d)(1)) in the active military or naval service of a country which was on September 16, 1940, at war with a country with which the United States was at war during World War II;

(B) entered into such active service on or before December 8, 1941;

(C) was a citizen of the United States throughout such period of service or lost his United States citizenship solely because of his entrance into such service;

(D) had resided in the United States for a period or periods aggregating four years during the five-year period ending on the day of, and was domiciled in the United States on the day of, such entrance into such active service; and

(E)(i) was discharged or released from such service under conditions other than dishonorable after active service of ninety days or more or by reason of a disability or injury incurred or aggravated in service in line of duty, or

(ii) died while in such service,

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[1]August 28, 1950 [P.L. 81-734; 64 Stat. 477].
[2]April 20, 1983 [P.L. 98-21; 97 Stat. 65].
[3]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

shall be considered a World War II veteran (as defined in subsection (d)(2)) and such service shall be considered to have been performed in the active military or naval service of the United States.

(2) In the case of any individual to whom paragraph (1) applies, proof of support required under section 202(f) or (h) may be filed at any time prior to the expiration of two years after the date of such individual's death or the date of the enactment of this subsection[1], whichever is the later.

VOLUNTARY AGREEMENTS FOR COVERAGE OF STATE AND LOCAL EMPLOYEES[2]

Purpose of Agreement

SEC. 218. [42 U.S.C. 418] (a)(1) The Secretary of Health, Education, and Welfare shall, at the request of any State, enter into an agreement with such State for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such State or any political subdivision thereof. Each such agreement shall contain such provisions, not inconsistent with the provisions of this section, as the State may request.

(2) Notwithstanding section 210(a), for the purposes of this title the term "employment" includes any service included under an agreement entered into under this section.

Definitions

(b) For the purposes of this section—

(1) The term "State" does not include the District of Columbia, Guam, or American Samoa.

(2) The term "political subdivision" includes an instrumentality of (A) a State, (B) one or more political subdivisions of a State, or (C) a State and one or more of its political subdivisions.

(3) The term "employee" includes an officer of a State or political subdivision.

(4) The term "retirement system" means a pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof.

(5) The term "coverage group" means (A) employees of the State other than those engaged in performing service in connection with a proprietary function; (B) employees of a political subdivision of a State other than those engaged in performing service in connection with a proprietary function; (C) employees of a State engaged in performing service in connection with a single proprietary function; or (D) employees of a political subdivision of a State engaged in performing service in connection with a single proprietary function. If under the preceding sentence an employee would be included in more than one coverage group by reason of the fact that he performs service in

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[1] August 28, 1958 [P.L. 85-840; 72 Stat. 1013].

[2] See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §1141(c), with respect to exception applicable to payments made before January 1, 1984.

See P.L. 98-21, "Social Security Amendments of 1983", §125, with respect to treatment of certain faculty practice plans.

connection with two or more proprietary functions or in connection with both a proprietary function and a nonproprietary function, he shall be included in only one such coverage group. The determination of the coverage group in which such employee shall be included shall be made in such manner as may be specified in the agreement. Persons employed under section 709 of title 32, United States Code, who elected under section 6 of the National Guard Technicians Act of 1968[1] to remain covered by an employee retirement system of, or plan sponsored by, a State or the Commonwealth of Puerto Rico, shall, for the purposes of this Act, be employees of the State or the Commonwealth of Puerto Rico and (notwithstanding the preceding provisions of this paragraph), shall be deemed to be a separate coverage group. For purposes of this section, individuals employed pursuant to an agreement, entered into pursuant to section 205 of the Agricultural Marketing Act of 1946[2] (7 U.S.C. 1624) or section 14 of the Perishable Agricultural Commodities Act, 1930[3] (7 U.S.C. 499n), between a State and the United States Department of Agriculture to perform services as inspectors of agricultural products may be deemed, at the option of the State, to be employees of the State and (notwithstanding the preceding provisions of this paragraph) shall be deemed to be a separate coverage group.

Services Covered

(c)(1) An agreement under this section shall be applicable to any one or more coverage groups designated by the State.

(2) In the case of each coverage group to which the agreement applies, the agreement must include all services (other than services excluded by or pursuant to subsection (d) or paragraph (3), (5), or (6) of this subsection) performed by individuals as members of such group.

(3) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any one or more of the following:

(A) All services in any class or classes of (i) elective positions, (ii) part-time positions, or (iii) positions the compensation for which is on a fee basis;

(B) All services performed by individuals as members of a coverage group in positions covered by a retirement system on the date such agreement is made applicable to such coverage group, but only in the case of individuals who, on such date (or, if later, the date on which they first occupy such positions), are not eligible to become members of such system and whose services in such positions have not already been included under such agreement pursuant to subsection (d)(3).

(4) The Secretary of Health, Education, and Welfare shall, at the request of any State, modify the agreement with such State so as to (A) include any coverage group to which the agreement did not previously apply, or (B) include, in the case of any coverage group to which the agreement applies, services previously excluded from the

[1] P.L. 90-486.
[2] P.L. 79-733.
[3] P.L. 71-420.

agreement; but the agreement as so modified may not be inconsistent with the provisions of this section applicable in the case of an original agreement with a State. A modification of an agreement pursuant to clause (B) of the preceding sentence may apply to individuals to whom paragraph (3)(B) is applicable (whether or not the previous exclusion of the service of such individuals was pursuant to such paragraph), but only if such individuals are, on the effective date specified in such modification, ineligible to be members of any retirement system or if the modification with respect to such individuals is pursuant to subsection (d)(3).

(5) Such agreement shall, if the State requests it, exclude (in the case of any coverage group) any agricultural labor, or service performed by a student, designated by the State. This paragraph shall apply only with respect to service which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section and service the remuneration for which is excluded from wages by paragraph (2) of section 209(h).

(6) Such agreement shall exclude—

(A) service performed by an individual who is employed to relieve him from unemployment,

(B) service performed in a hospital, home, or other institution by a patient or inmate thereof,

(C) covered transportation service (as determined under section 210(k)),

(D) service (other than agricultural labor or service performed by a student) which is excluded from employment by any provision of section 210(a) other than paragraph (7) of such section, and

(E) service performed by an individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or other similar emergency.

(7) No agreement may be made applicable (either in the original agreement or by any modification thereof) to service performed by any individual to whom paragraph (3)(B) is applicable unless such agreement provides (in the case of each coverage group involved) either that the service of any individual to whom such paragraph is applicable and who is a member of such coverage group shall continue to be covered by such agreement in case he thereafter becomes eligible to be a member of a retirement system, or that such service shall cease to be so covered when he becomes eligible to be a member of such a system (but only if the agreement is not already applicable to such system pursuant to subsection (d)(3)), whichever may be desired by the State.

(8) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified on or after January 1, 1968, to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $100. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter[1] in which the modification is mailed or delivered by other means to the Secretary.

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[1]As in original. This may be inconsistent with calendar "year" used in previous sentence.

Positions Covered By Retirement Systems

(d)(1) No agreement with any State may be made applicable (either in the original agreement or by any modification thereof) to any service performed by employees as members of any coverage group in positions covered by a retirement system either (A) on the date such agreement is made applicable to such coverage group, or (B) on the date of enactment of the succeeding paragraph of this subsection[1] (except in the case of positions which are, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of enactment of such succeeding paragraph[2], no longer covered by a retirement system on the date referred to in clause (A), and except in the case of positions excluded by paragraph (5)(A)). The preceding sentence shall not be applicable to any service performed by an employee as a member of any coverage group in a position (other than a position excluded by paragraph (5)(A)) covered by a retirement system on the date an agreement is made applicable to such coverage group if, on such date (or, if later, the date on which such individual first occupies such position), such individual is ineligible to be a member of such system.

(2) It is hereby declared to be the policy of the Congress in enacting the succeeding paragraphs of this subsection that the protection afforded employees in positions covered by a retirement system on the date an agreement under this section is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as a result of making the agreement so applicable or as a result of legislative enactment in anticipation thereof.

(3) Notwithstanding paragraph (1), an agreement with a State may be made applicable (either in the original agreement or by any modification thereof) to service performed by employees in positions covered by a retirement system (including positions specified in paragraph (4) but not including positions excluded by or pursuant to paragraph (5)), if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the following conditions have been met:

(A) A referendum by secret written ballot was held on the question of whether service in positions covered by such retirement system should be excluded from or included under an agreement under this section;

(B) An opportunity to vote in such referendum was given (and was limited) to eligible employees;

(C) Not less than ninety days' notice of such referendum was given to all such employees;

(D) Such referendum was conducted under the supervision of the governor or an agency or individual designated by him; and

(E) A majority of the eligible employees voted in favor of including service in such positions under an agreement under this section.

An employee shall be deemed an "eligible employee" for purposes of any referendum with respect to any retirement system if, at the time

[1] September 1, 1954 [P.L. 83-761; 68 Stat. 1056].
[2] September 1, 1954 [P.L. 83-761; 68 Stat. 1056].

such referendum was held, he was in a position covered by such retirement system and was a member of such system, and if he was in such a position at the time notice of such referendum was given as required by clause (C) of the preceding sentence; except that he shall not be deemed an "eligible employee" if, at the time the referendum was held, he was in a position to which the State agreement already applied, or if he was in a position excluded by or pursuant to paragraph (5). No referendum with respect to a retirement system shall be valid for purposes of this paragraph unless held within the two-year period which ends on the date of execution of the agreement or modification which extends the insurance system established by this title to such retirement system, nor shall any referendum with respect to a retirement system be valid for purposes of this paragraph if held less than one year after the last previous referendum held with respect to such retirement system.

(4) For the purposes of subsection (c) of this section, the following employees shall be deemed to be a separate coverage group—

(A) all employees in positions which were covered by the same retirement system on the date the agreement was made applicable to such system (other than employees to whose services the agreement already applied on such date);

(B) all employees in positions which became covered by such system at any time after such date; and

(C) all employees in positions which were covered by such system at any time before such date and to whose services the insurance system established by this title has not been extended before such date because the positions were covered by such retirement system (including employees to whose services the agreement was not applicable on such date because such services were excluded pursuant to subsection (c)(3)(B)).

(5)(A) Nothing in paragraph (3) of this subsection shall authorize the extension of the insurance system established by this title to service in any policeman's or fireman's position.

(B) At the request of the State, any class or classes of positions covered by a retirement system which may be excluded from the agreement pursuant to paragraph (3) or (5) of subsection (c), and to which the agreement does not already apply, may be excluded from the agreement at the time it is made applicable to such retirement system; except that, notwithstanding the provisions of paragraph (3)(B) of such subsection, such exclusion may not include any services to which such paragraph (3)(B) is applicable. In the case of any such exclusion, each such class so excluded shall, for purposes of this subsection, constitute a separate retirement system in case of any modification of the agreement thereafter agreed to.

(6)(A) If a retirement system covers positions of employees of the State and positions of employees of one or more political subdivisions of the State, or covers positions of employees of two or more political subdivisions of the State, then for purposes of the preceding paragraphs of this subsection, there shall, if the State so desires, be deemed to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

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Where a retirement system covering positions of employees of a State and positions of employees of one or more political subdivisions of a State, or covering positions of employees of two or more political subdivisions of the State, is not divided into separate retirement systems pursuant to the preceding sentence or pursuant to subparagraph (C), then the State may, for purposes of subsection (f) only, deem the system to be a separate retirement system with respect to any one or more of the political subdivisions concerned and, where the retirement system covers positions of employees of the State, a separate retirement system with respect to the State or with respect to the State and any one or more of the political subdivisions concerned.

(B) If a retirement system covers positions of employees of one or more institutions of higher learning, then, for purposes of such preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of each such institution of higher learning. For the purposes of this subparagraph, the term "institutions of higher learning" includes junior colleges and teachers colleges. If a retirement system covers positions of employees of a hospital which is an integral part of a political subdivision, then, for purposes of the preceding paragraphs there shall, if the State so desires, be deemed to be a separate retirement system for the employees of such hospital.

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after the date of enactment of this subparagraph[1], is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of

[1]P.L. 84-880, §104(e), enacted this sentence August 1, 1956.
P.L. 85-840, §315(a)(1), enacted this subparagraph August 28, 1958.

positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

(D)(i) The position of any individual which is covered by any retirement system to which subparagraph (C) is applicable shall, if such individual is ineligible to become a member of such system on August 1, 1956, or, if later, the day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title.

(ii) Notwithstanding clause (i), the State may, pursuant to subsection (c)(4)(B) and subject to the conditions of continuation or termination of coverage provided for in subsection (c)(7), modify its agreement under this section to include services performed by all individuals described in clause (i) other than those individuals to whose services the agreement already applies. Such individuals shall be deemed (on and after the effective date of the modification) to be in positions covered by the separate retirement system consisting of the positions of members of the division or part who desire coverage under the insurance system established under this title.

(E) An individual who is in a position covered by a retirement system to which subparagraph (C) is applicable and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection (other than paragraph (8)), be regarded as a member of such system; except that, in the case of any retirement system a division or part of which is covered under the agreement (either in the original agreement or by a modification thereof), which coverage is agreed to prior to 1960, the preceding provisions of this subparagraph shall apply only if the State so requests and any such individual referred to in such preceding provisions shall, if the State so requests, be treated, after division of the retirement system pursuant to such subparagraph (C), the same as individuals in positions referred to in subparagraph (F).

(F) In the case of any retirement system divided pursuant to subparagraph (C), the position of any member of the division or part composed of positions of members who do not desire coverage may be transferred to the separate retirement system composed of positions of members who desire such coverage if it is so provided in a modification of such agreement which is mailed, or delivered by other means, to the Secretary prior to 1970 or, if later, the expiration of two years after the date on which such agreement, or the modification thereof making the agreement applicable to such separate retirement system, as the case may be, is agreed to, but only if, prior to such modification or such later modification, as the case may be, the individual occupying such position files with the State a written request for such transfer. Notwithstanding subsection (f)(1), any such modification or later modification, providing for the transfer of additional positions within a retirement system previously divided pursuant to subparagraph (C) to the separate retirement system composed of positions of members who desire coverage, shall

be effective with respect to services performed after the same effective date as that which was specified in the case of such previous division.

(G) For the purposes of this subsection, in the case of any retirement system of the State of Florida, Georgia, Minnesota, North Dakota, Pennsylvania, Washington, or Hawaii which covers positions of employees of such State who are compensated in whole or in part from grants made to such State under title III, there shall be deemed to be, if such State so desires, a separate retirement system with respect to any of the following:

(i) the positions of such employees;

(ii) the positions of all employees of such State covered by such retirement system who are employed in the department of such State in which the employees referred to in clause (i) are employed; or

(iii) employees of such State covered by such retirement system who are employed in such department of such State in positions other than those referred to in clause (i).

(7) The certification by the governor (or an official of the State designated by him for the purpose) required under paragraph (3) shall be deemed to have been made, in the case of a division or part (created under subparagraph (C) of paragraph (6) or the corresponding provision of prior law) consisting of the positions of members of a retirement system who desire coverage under the agreement under this section, if the governor (or the official so designated) certifies to the Secretary of Health, Education, and Welfare that—

(A) an opportunity to vote by written ballot on the question of whether they wish to be covered under an agreement under this section was given to all individuals who were members of such system at the time the vote was held;

(B) not less than ninety days' notice of such vote was given to all individuals who were members of such system on the date the notice was issued;

(C) the vote was conducted under the supervision of the governor or an agency or individual designated by him; and

(D) such system was divided into two parts or divisions in accordance with the provisions of subparagraphs (C) and (D) of paragraph (6) or the corresponding provision of prior law.

For purposes of this paragraph, an individual in a position to which the State agreement already applied or in a position excluded by or pursuant to paragraph (5) shall not be considered a member of the retirement system.

(8)(A) Notwithstanding paragraph (1), if under the provisions of this subsection an agreement is, after December 31, 1958, made applicable to service performed in positions covered by a retirement system, service performed by an individual in a position covered by such a system may not be excluded from the agreement because such position is also covered under another retirement system.

(B) Subparagraph (A) shall not apply to service performed by an individual in a position covered under a retirement system if such individual, on the day the agreement is made applicable to service performed in positions covered by such retirement system, is not a member of such system and is a member of another system.

(C) If an agreement is made applicable, prior to 1959, to service in positions covered by any retirement system, the preceding provisions of this paragraph shall be applicable in the case of such system if the agreement is modified to so provide.

(D) Except in the case of agreements with the States named in subsection (p) and agreements with interstate instrumentalities, nothing in this paragraph shall authorize the application of an agreement to service in any policeman's or fireman's position.

Payments and Reports by States

(e)(1) Each agreement under this section shall provide—

(A) that the State will pay to the Secretary of the Treasury—

(i) on the last day of each calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954[1] with respect to the period which includes the first fifteen days of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code[2], and

(ii) on the fifteenth day of the calendar month following such calendar month, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 of such Code[3] with respect to the period beginning with the sixteenth day of such calendar month and ending with the last day of such calendar month if the services for which wages were paid in such period to employees covered by the agreement constituted employment as defined in section 3121 of such Code[4]; and[5]

(B) that the State will comply with such regulations relating to payments and reports as the Secretary of Health, Education, and Welfare may prescribe to carry out the purposes of this section.

(2) Where—

(A) an individual in any calendar year performs services to which an agreement under this section is applicable (i) as the employee of two or more political subdivisions of a State or (ii) as the employee of a State and one or more political subdivisions of such State; and

(B) such State provides all of the funds for the payment of those amounts referred to in paragraph (1)(A) which are equivalent to the taxes imposed by section 3111 of the Internal Revenue Code of 1954[6] with respect to wages paid to such individual for such services; and

(C) the political subdivision or subdivisions involved do not reimburse such State for the payment of such amounts or, in the case of services described in subparagraph (A)(ii), for the payment of so much of such amounts as is attributable to employment by such subdivision or subdivisions;

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3101, p. 813.
[2]See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.
[3]See P.L. 83-591, "Internal Revenue Code of 1954", §3101, p. 813.
[4]See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.
[5]P.L. 98-21, §342(a), amended subparagraph (A) in its entirety, effective with respect to calendar months beginning after December 31, 1983.
[6]See P.L. 83-591, "Internal Revenue Code of 1954", §3111, p. 815.

then, notwithstanding paragraph (1), the agreement under this section with such State may provide (either in the original agreement or by a modification thereof) that the amounts referred to in paragraph (1)(A) may be computed as though the wages paid to such individual for the services referred to in clause (A) of this paragraph were paid by one political subdivision for services performed in its employ; but the provisions of this paragraph shall be applicable only where such State complies with such regulations as the Secretary may prescribe to carry out the purposes of this paragraph. The preceding sentence shall be applicable with respect to wages paid after an effective date specified in such agreement or modification, but in no event with respect to wages paid before (i) January 1, 1957, in the case of an agreement or modification which is mailed or delivered by other means to the Secretary before January 1, 1962, or (ii) the first day of the year in which the agreement or modification is mailed or delivered by other means to the Secretary, in the case of an agreement or modification which is so mailed or delivered on or after January 1, 1962.

Effective Date of Agreement

(f)(1) Except as provided in subsection (e)(2), any agreement or modification of an agreement under this section shall be effective with respect to services performed after an effective date specified in such agreement or modification; except that such date may not be earlier than the last day of the sixth calendar year preceding the year in which such agreement or modification, as the case may be, is agreed to by the Secretary and the State.

(2) In the case of service performed by members of any coverage group—

(A) to which an agreement under this section is made applicable, and

(B) with respect to which the agreement, or modification thereof making the agreement so applicable, specifies an effective date earlier than the date of execution of such agreement and such modification, respectively,

the agreement shall, if so requested by the State, be applicable to such services (to the extent the agreement was not already applicable) performed before such date of execution and after such effective date by any individual as a member of such coverage group if he is such a member on a date, specified by the State, which is earlier than such date of execution, except that in no case may the date so specified be earlier than the date such agreement or such modification, as the case may be, is mailed, or delivered by other means, to the Secretary.

(3) Notwithstanding the provisions of paragraph (2) of this subsection, in the case of services performed by individuals as members of any coverage group to which an agreement under this section is made applicable, and with respect to which there were timely paid in good faith to the Secretary of the Treasury amounts equivalent to the sum of the taxes which would have been imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954[1] had such services constituted employment for purposes of chapter 21 of such Code[2] at

[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3101, p. 813.
[2]See P.L. 83-591, "Internal Revenue Code of 1954", chapter 21, p. 813.

the time they were performed, and with respect to which refunds were not obtained, such individuals may, if so requested by the State, be deemed to be members of such coverage group on the date designated pursuant to paragraph (2).

Duration of Agreement[1]

(g) No agreement under this section may be terminated, either in its entirety or with respect to any coverage group, on or after the date of the enactment of the Social Security Amendments of 1983[2].

Deposits in Trust Fund; Adjustments[3]

(h)(1) All amounts received by the Secretary of the Treasury under an agreement made pursuant to this section shall be deposited in the Trust Funds and the Federal Hospital Insurance Trust Fund in the ratio in which amounts are appropriated to such Funds pursuant to subsection (a)(3) of section 201, subsection (b)(1) of such section, and subsection (a)(1) of section 1817, respectively.

(2) If more or less than the correct amount due under an agreement made pursuant to this section is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be prescribed by regulations of the Secretary of Health, Education, and Welfare.

(3) If an overpayment cannot be adjusted under paragraph (2), the amount thereof and the time or times it is to be paid shall be certified by the Secretary of Health, Education, and Welfare to the Managing Trustee, and the Managing Trustee, through the Fiscal Service of the Treasury Department and prior to any action thereon by the General Accounting Office, shall make payment in accordance with such certification. The Managing Trustee shall not be held personally liable for any payment or payments made in accordance with a certification by the Secretary of Health, Education, and Welfare.

Regulations[4]

(i) Regulations of the Secretary of Health, Education, and Welfare to carry out the purposes of this section shall be designed to make the requirements imposed on States pursuant to this section the same, so far as practicable, as those imposed on employers pursuant to this title and subchapter A or E of chapter 9 of the Internal Revenue Code[5].

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[1]P.L. 98-21, §103(a), amended subsection (g) in its entirety, effective with respect to any agreement in effect under §218 on April 20, 1983, without regard to whether a notice of termination is in effect on that date, and to any agreement or modification thereof which may become effective under §218 after that date.

[2]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

[3]See P.L. 98-21, "Social Security Amendments of 1983", §123(b)(4), with respect to deposits in social security trust funds.

[4]See P.L. 94-202, [Social Security—Hearings and Review Procedures], §8(k), with respect to procedures for State reporting.

[5]P.L. 76-1. As in original. Reference should be to P.L. 83-591, "Internal Revenue Code of 1954"; see subtitle A, p. 803.

Failure To Make Payments

(j) In case any State does not make, at the time or times due, the payments provided for under an agreement pursuant to this section, there shall be added, as part of the amounts due, interest at the rate of 6 per centum per annum from the date due until paid, and the Secretary of Health, Education, and Welfare may, in his discretion, deduct such amounts plus interest from any amounts certified by him to the Secretary of the Treasury for payment to such State under any other provision of this Act. Amounts so deducted shall be deemed to have been paid to the State under such other provision of this Act. Amounts equal to the amounts deducted under this subsection are hereby appropriated to the Trust Funds in the ratio in which amounts are deposited in such Funds pursuant to subsection (h)(1).

Instrumentalities of Two or More States

(k)(1) The Secretary of Health, Education, and Welfare may, at the request of any instrumentality of two or more States, enter into an agreement with such instrumentality for the purpose of extending the insurance system established by this title to services performed by individuals as employees of such instrumentality. Such agreement, to the extent practicable, shall be governed by the provisions of this section applicable in the case of an agreement with a State.

(2) In the case of any instrumentality of two or more States, if—

(A) employees of such instrumentality are in positions covered by a retirement system of such instrumentality or of any of such States or any of the political subdivisions thereof, and

(B) such retirement system is (on, before, or after the date of enactment of this paragraph[1]) divided into two divisions or parts, one of which is composed of positions of members of such system who are employees of such instrumentality and who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who are employees of such instrumentality and who do not desire such coverage, and

(C) it is provided that there shall be included in such division or part composed of the positions of members desiring such coverage the positions of employees of such instrumentality who become members of such system after such coverage is extended,

then such retirement system shall, if such instrumentality so desires, be deemed to be a separate retirement system with respect to each such division or part. An individual who is in a position covered by a retirement system divided pursuant to the preceding sentence and who is not a member of such system but is eligible to become a member thereof shall, for purposes of this subsection, be regarded as a member of such system. Coverage under the agreement of any such individual shall be provided under the same conditions, to the extent practicable, as are applicable in the case of the States to which the provisions of subsection (d)(6)(C) apply. The position of any employee of any such instrumentality which is covered by any retirement system to which the first sentence of this paragraph is applicable shall, if such individual is ineligible to become a member of such system on the date of enactment of this paragraph[2] or, if later, the

[1] August 30, 1957 [P.L. 85-226; 71 Stat. 511].
[2] August 30, 1957 [P.L. 85-226; 71 Stat. 511].

day he first occupies such position, be deemed to be covered by the separate retirement system consisting of the positions of members of the division or part who do not desire coverage under the insurance system established under this title. Services in positions covered by a separate retirement system created pursuant to this subsection (and consisting of the positions of members who desire coverage under an agreement under this section) shall be covered under such agreement on compliance, to the extent practicable, with the same conditions as are applicable to coverage under an agreement under this section of services in positions covered by a separate retirement system created pursuant to subparagraph (C) of subsection (d)(6) or the corresponding provision of prior law (and consisting of the positions of members who desire coverage under such agreement).

(3) Any agreement with any instrumentality of two or more States entered into pursuant to this Act may, notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), apply to service performed by employees of such instrumentality in any policeman's or fireman's position covered by a retirement system, but only upon compliance, to the extent practicable, with the requirements of subsection (d)(3). For the purpose of the preceding sentence, a retirement system which covers positions of policemen or firemen or both, and other positions shall, if the instrumentality concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

Delegation of Functions

(l) The Secretary of Health, Education, and Welfare is authorized, pursuant to agreement with the head of any Federal agency, to delegate any of his functions under this section to any officer or employee of such agency and otherwise to utilize the services and facilities of such agency in carrying out such functions, and payment therefor shall be in advance or by way of reimbursement, as may be provided in such agreement.

WISCONSIN RETIREMENT FUND [1]

(m)(1) Notwithstanding paragraph (1) of subsection (d), the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

(2) All employees in positions covered by the Wisconsin retirement fund at any time on or after January 1, 1951, shall, for the purposes of subsection (c) only, be deemed to be a separate coverage group; except that there shall be excluded from such separate coverage group all employees in positions to which the agreement applies without regard to this subsection.

(3) The modification pursuant to this subsection shall exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) service performed by any individual during any period before he is included under the Wisconsin retirement fund.

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[1] As in original; P.L. 83-279, §1; 67 Stat. 587.

(4) The modification pursuant to this subsection shall, if the State of Wisconsin requests it, exclude (in the case of employees in the coverage group established by paragraph (2) of this subsection) all service performed in policemen's positions, all service performed in firemen's positions, or both.

Certain Positions No Longer Covered By Retirement Systems

(n) Notwithstanding subsection (d), an agreement with any State entered into under this section prior to the date of the enactment of this subsection[1] may, prior to January 1, 1958, be modified pursuant to subsection (c)(4) so as to apply to services performed by employees, as members of any coverage group to which such agreement already applies (and to which such agreement applied on such date of enactment[2]), in positions (1) to which such agreement does not already apply, (2) which were covered by a retirement system on the date such agreement was made applicable to such coverage group, and (3) which, by reason of action by such State or political subdivision thereof, as may be appropriate, taken prior to the date of the enactment of this subsection[3], are no longer covered by a retirement system on the date such agreement is made applicable to such services.

Certain Employees of the State of Utah

(o) Notwithstanding the provisions of subsection (d), the agreement with the State of Utah entered into pursuant to this section may be modified pursuant to subsection (c)(4) so as to apply to services performed for any of the following, the employees performing services for each of which shall constitute a separate coverage group: Weber Junior College, Carbon Junior College, Dixie Junior College, Central Utah Vocational School, Salt Lake Area Vocational School, Center for the Adult Blind, Union High School (Roosevelt, Utah), Utah High School Activities Association, State Industrial School, State Training School, State Board of Education, and Utah School Employees Retirement Board. Any modification agreed to prior to January 1, 1955, may be made effective with respect to services performed by employees as members of any of such coverage groups after an effective date specified therein, except that in no case may any such date be earlier than December 31, 1950. Coverage provided for in this subsection shall not be affected by a subsequent change in the name of a group.[4]

Policemen and Firemen in Certain States

(p)(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to the date of enactment of this subsection[5] may,

[1]September 1, 1954 [P.L. 83-761; 68 Stat. 1058].
[2]September 1, 1954 [P.L. 83-761; 68 Stat. 1058].
[3]September 1, 1954 [P.L. 83-761; 68 Stat. 1058].
[4]P.L. 98-21, §325(a), added the preceding sentence, effective with respect to name changes made before, on, or after April 20, 1983.
[5]August 1, 1956 [P.L. 84-880; 70 Stat. 826].

notwithstanding the provisions of subsection (d)(5)(A) and the references thereto in subsections (d)(1) and (d)(3), be modified pursuant to subsection (c)(4) to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after the date of the enactment of this subsection[1], but only upon compliance with the requirements of subsection (d)(3). For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

(2) A State, not otherwise listed by name in paragraph (1), shall be deemed to be a State listed in such paragraph for the purpose of extending coverage under this title to service in firemen's positions covered by a retirement system, if the governor of the State, or an official of the State designated by him for the purpose, certifies to the Secretary of Health, Education, and Welfare that the overall benefit protection of the employees in such positions would be improved by reason of the extension of such coverage to such employees. Notwithstanding the provisions of the second sentence of such paragraph (1), such firemen's positions shall be deemed a separate retirement system and no other positions shall be included in such system.

Time Limitation on Assessments

(q)(1) Where a State is liable for an amount due under an agreement pursuant to this section, such State shall remain so liable until the Secretary is satisfied that the amount due has been paid to the Secretary of the Treasury.

(2) Notwithstanding paragraph (1), a State shall not be liable for an amount due under an agreement pursuant to this section, with respect to the wages paid to individuals, after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid, or

(B) three years after the date on which such amount became due, or

(C) three years, three months, and fifteen days after the year following the year in which this subsection is enacted[2],

unless prior to the expiration of such period the Secretary makes an assessment of the amount due.

(3) For purposes of this subsection and section 205(c), an assessment of an amount due is made when the Secretary mails or otherwise delivers to the State a notice stating the amount he has determined to be due under an agreement pursuant to this section and the basis for such determination.

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) shall nevertheless be deemed to have been made within such period if—

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[1]August 1, 1956 [P.L. 84-880; 70 Stat. 829].

[2]Enacted September 13, 1960 [P.L. 86-778; 74 Stat. 930]. The date described in this subparagraph (C) is April 15, 1965.

(A) before the expiration of such period (or, if it has previously been extended under this paragraph, of such period as so extended), the State and the Secretary agree in writing to an extension of such period (or extended period) and, subject to such conditions as may be agreed upon, the Secretary makes the assessment prior to the expiration of such extension; or

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in a calendar year as members of a coverage group, and the Secretary of Health, Education, and Welfare makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health, Education, and Welfare shall make such assessment only with respect to the wages paid to such individuals in such calendar year as members of such coverage group; or

(C) pursuant to subparagraph (A) or (B) of section 205(c)(5) he includes in his records an entry with respect to wages for an individual, but only if such assessment is limited to the amount due with respect to such wages and is made within the period such entry could be made in such records under such subparagraph.

(5) If the Secretary allows a claim for a credit or refund of an overpayment by a State under an agreement pursuant to this section, with respect to wages paid or alleged to have been paid to an individual in a calendar year for services as a member of a coverage group, and if as a result of the facts on which such allowance is based there is an amount due from the State, with respect to wages paid to such individual in such calendar year for services performed as a member of a coverage group, for which amount the State is not liable by reason of paragraph (2), then notwithstanding paragraph (2) the State shall be liable for such amount due if the Secretary makes an assessment of such amount due at the time of or prior to notification to the State of the allowance of such claim. For purposes of this paragraph and paragraph (6), interest as provided for in subsection (j) shall not be included in determining the amount due.

(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) or such period as extended pursuant to paragraph (4), with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reason of paragraph (2), only if the State—

(A) pays to the Secretary of the Treasury the amount due under such agreement with respect to such wages, and

(B) agrees in writing with the Secretary of Health, Education, and Welfare to an extension of the period specified in paragraph (2) with respect to wages paid to all individuals performing services as employees in such coverage group in the period or periods designated by the State in such wage reports as the

period or periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2), or such period as extended pursuant to paragraph (4), shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

(7) Notwithstanding the preceding provisions of this subsection, where there is an amount due by a State under an agreement pursuant to this section and there has been a fraudulent attempt on the part of an officer or employee of the State or any political subdivision thereof to defeat or evade payment of such amount due, the State shall be liable for such amount due without regard to the provisions of paragraph (2), and the Secretary may make an assessment of such amount due at any time.

Time Limitation on Credits and Refunds

(r)(1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar year shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid or alleged to have been paid, or

(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar year, or

(C) two years after such overpayment was made to the Secretary of the Treasury, or

(D) three years, three months, and fifteen days after the year following the year in which this subsection is enacted[1],

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health, Education, and Welfare by the State.

(2) A claim for a credit or refund filed by a State after the expiration of the period specified by paragraph (1) shall nevertheless be deemed to have been filed within such period if—

(A) before the expiration of such period (or, if it has previously been extended under this subparagraph, of such period as so extended) the State and the Secretary agree in writing to an extension of such period (or extended period) and the claim is filed with the Secretary by the State prior to the expiration of such extension; but any claim for a credit or refund valid because of this subparagraph shall be allowed only to the extent authorized by the conditions provided for in the agreement for such extension, or

(B) the Secretary deletes from his records an entry with respect to wages of an individual pursuant to the provisions of subparagraph (A), (B), or (E) of section 205(c)(5), but only with respect to the entry so deleted.

[1]Enacted September 13, 1960 [P.L. 86-778; 74 Stat. 932]. The date described in this subparagraph is April 15, 1965.

Review by Secretary

(s) Where the Secretary has made an assessment of an amount due by a State under an agreement pursuant to this section, disallowed a State's claim for a credit or refund of an overpayment under such agreement, or allowed a State a credit or refund of an overpayment under such agreement, he shall review such assessment, disallowance, or allowance if a written request for such review is filed with him by the State within 90 days (or within such further time as he may allow) after notification to the State of such assessment, disallowance, or allowance. On the basis of the evidence obtained by or submitted to the Secretary, he shall render a decision affirming, modifying, or reversing such assessment, disallowance, or allowance. In notifying the State of his decision, the Secretary shall state the basis therefor.

Review by Court

(t)(1) Notwithstanding any other provision of this title any State, irrespective of the amount in controversy, may file, within two years after the mailing to such State of the notice of any decision by the Secretary pursuant to subsection (s) affecting such State, or within such further time as the Secretary may allow, a civil action for a redetermination of the correctness of the assessment of the amount due, the disallowance of the claim for a refund or credit, or the allowance of the refund or credit, as the case may be, with respect to which the Secretary has rendered such decision. Such action shall be brought in the district court of the United States for the judicial district in which is located the capital of such State, or, if such action is brought by an instrumentality of two or more States, the principal office of such instrumentality. The judgment of the court shall be final, except that it shall be subject to review in the same manner as judgments of such court in other civil actions. Any action filed under this subsection shall survive notwithstanding any change in the person occupying the office of Secretary or any vacancy in such office.

(2) Notwithstanding the provisions of section 2411 of title 28, United States Code, no interest shall accrue to a State after final judgment with respect to a credit or refund of an overpayment made under an agreement pursuant to this section.

(3) The first sentence of section 2414 of title 28, United States Code, shall not apply to final judgments rendered by district courts of the United States in civil actions filed under this subsection. In such cases, the payment of amounts due to States pursuant to such final judgments shall be adjusted in accordance with the provisions of this section and with regulations promulgated by the Secretary.

Positions Compensated Solely on a Fee Basis

(u)(1) Notwithstanding any other provision in this section, an agreement entered into under this section may be made applicable to service performed after 1967 in any class or classes of positions compensated solely on a fee basis to which such agreement did not apply prior to 1968 only if the State specifically requests that its agreement be made applicable to such service in such class or classes of positions.

(2) Notwithstanding any other provision in this section, an agreement entered into under this section may be modified, at the option of the State, at any time after 1967, so as to exclude services performed in any class or classes of positions compensation for which is solely on a fee basis.

(3) Any modification made under this subsection shall be effective with respect to services performed after the last day of the calendar year in which the modification is agreed to by the Secretary and the State.

(4) If any class or classes of positions have been excluded from coverage under the State agreement by a modification agreed to under this subsection, the Secretary and the State may not thereafter modify such agreement so as to again make the agreement applicable with respect to such class or classes of positions.

[SEC. 219. Repealed.[1]]

DISABILITY PROVISIONS INAPPLICABLE IF BENEFIT RIGHTS IMPAIRED

SEC. 220. [42 U.S.C. 420] None of the provisions of this title relating to periods of disability shall apply in any case in which their application would result in the denial of monthly benefits or a lump-sum death payment which would otherwise be payable under this title; nor shall they apply in the case of any monthly benefit or lump-sum death payment under this title if such benefit or payment would be greater without their application.

DISABILITY DETERMINATIONS

SEC. 221. [42 U.S.C. 421] (a)(1) In the case of any individual, the determination of whether or not he is under a disability (as defined in section 216(i) or 223(d)) and of the day such disability began, and the determination of the day on which such disability ceases, shall be made by a State agency, notwithstanding any other provision of law, in any State that notifies the Secretary in writing that it wishes to make such disability determinations commencing with such month as the Secretary and the State agree upon, but only if (A) the Secretary has not found, under subsection (b)(1), that the State agency has substantially failed to make disability determinations in accordance with the applicable provisions of this section or rules issued thereunder, and (B) the State has not notified the Secretary, under subsection (b)(2), that it does not wish to make such determinations. If the Secretary once makes the finding described in clause (A) of the preceding sentence, or the State gives the notice referred to in clause (B) of such sentence, the Secretary may thereafter determine whether (and, if so, beginning with which month and under what conditions) the State may again make disability determinations under this paragraph.

(2) The disability determinations described in paragraph (1) made by a State agency shall be made in accordance with the pertinent provisions of this title and the standards and criteria contained in regulations or other written guidelines of the Secretary pertaining to matters such as disability determinations, the class or classes of individuals with respect to which a State may make disability

[1] P.L. 86-778, §103(j)(1); 74 Stat. 937.

determinations (if it does not wish to do so with respect to all individuals in the State), and the conditions under which it may choose not to make all such determinations. In addition, the Secretary shall promulgate regulations specifying, in such detail as he deems appropriate, performance standards and administrative requirements and procedures to be followed in performing the disability determination function in order to assure effective and uniform administration of the disability insurance program throughout the United States. The regulations may, for example, specify matters such as—

(A) the administrative structure and the relationship between various units of the State agency responsible for disability determinations,

(B) the physical location of and relationship among agency staff units, and other individuals or organizations performing tasks for the State agency, and standards for the availability to applicants and beneficiaries of facilities for making disability determinations,

(C) State agency performance criteria, including the rate of accuracy of decisions, the time periods within which determinations must be made, the procedures for and the scope of review by the Secretary, and, as he finds appropriate, by the State, of its performance in individual cases and in classes of cases, and rules governing access of appropriate Federal officials to State offices and to State records relating to its administration of the disability determination function,

(D) fiscal control procedures that the State agency may be required to adopt, and

(E) the submission of reports and other data, in such form and at such time as the Secretary may require, concerning the State agency's activities relating to the disability determination.

Nothing in this section shall be construed to authorize the Secretary to take any action except pursuant to law or to regulations promulgated pursuant to law.[1]

(b)(1) If the Secretary finds, after notice and opportunity for a hearing, that a State agency is substantially failing to make disability determinations in a manner consistent with his regulations and other written guidelines, the Secretary shall, not earlier than 180 days following his finding, and after he has complied with the requirements of paragraph (3), make the disability determinations referred to in subsection (a)(1).

(2) If a State, having notified the Secretary of its intent to make disability determinations under subsection (a)(1), no longer wishes to make such determinations, it shall notify the Secretary in writing of that fact, and, if an agency of the State is making disability determinations at the time such notice is given, it shall continue to do so for not less than 180 days, or (if later) until the Secretary has complied with the requirements of paragraph (3). Thereafter, the

[1]P.L. 96-265, §304(a), amended subsection (a) in its entirety, effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

Secretary shall make the disability determinations referred to in subsection (a)(1).

(3)(A) The Secretary shall develop and initiate all appropriate procedures to implement a plan with respect to any partial or complete assumption by the Secretary of the disability determination function from a State agency, as provided in this section, under which employees of the affected State agency who are capable of performing duties in the disability determination process for the Secretary shall, notwithstanding any other provision of law, have a preference over any other individual in filling an appropriate employment position with the Secretary (subject to any system established by the Secretary for determining hiring priority among such employees of the State agency) unless any such employee is the administrator, the deputy administrator, or assistant administrator (or his equivalent) of the State agency, in which case the Secretary may accord such priority to such employee.

(B) The Secretary shall not make such assumption of the disability determination function until such time as the Secretary of Labor determines that, with respect to employees of such State agency who will be displaced from their employment on account of such assumption by the Secretary and who will not be hired by the Secretary to perform duties in the disability determination process, the State has made fair and equitable arrangements to protect the interests of employees so displaced. Such protective arrangements shall include only those provisions which are provided under all applicable Federal, State and local statutes including, but not limited to, (i) the preservation of rights, privileges, and benefits (including continuation of pension rights and benefits) under existing collective-bargaining agreements; (ii) the continuation of collective-bargaining rights; (iii) the assignment of affected employees to other jobs or to retraining programs; (iv) the protection of individual employees against a worsening of their positions with respect to their employment; (v) the protection of health benefits and other fringe benefits; and (vi) the provision of severance pay, as may be necessary.[1]

(c)(1) The Secretary may on his own motion or as required under paragraphs (2) and (3) review a determination, made by a State agency under this section, that an individual is or is not under a disability (as defined in section 216(i) or 223(d)) and, as a result of such review, may modify such agency's determination and determine that such individual either is or is not under a disability (as so defined) or that such individual's disability began on a day earlier or later than that determined by such agency, or that such disability ceased on a day earlier or later than that determined by such agency. A review by the Secretary on his own motion of a State agency determination under this paragraph may be made before or after any action is taken to implement such determination.

(2) The Secretary (in accordance with paragraph (3)) shall review determinations, made by State agencies pursuant to this section, that

[1]P.L. 96-265, §304(b), amended subsection (b) in its entirety, effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

individuals are under disabilities (as defined in section 216(i) or 223(d)). Any review by the Secretary of a State agency determination under this paragraph shall be made before any action is taken to implement such determination.

(3) In carrying out the provisions of paragraph (2) with respect to the review of determinations, made by State agencies pursuant to this section, that individuals are under disabilities (as defined in section 216(i) or 223(d)), the Secretary shall review—

(A) at least 15 percent of all such determinations made by State agencies in the fiscal year 1981,

(B) at least 35 percent of all such determinations made by State agencies in the fiscal year 1982, and

(C) at least 65 percent of all such determinations made by State agencies in any fiscal year after the fiscal year 1982.

(d) Any individual dissatisfied with any determination under subsection (a), (b)[1], (c), or (g) shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).[2]

(e) Each State which is making disability determinations under subsection (a)(1)[3] under this section shall be entitled to receive from the Trust Funds, in advance or by way of reimbursement, as determined by the Secretary[4], the cost to the State of making disability determinations under subsection (a)(1)[5]. The Secretary shall from time to time certify such amount as is necessary for this purpose to the Managing Trustee, reduced or increased, as the case may be, by any sum (for which adjustment hereunder has not previously been made) by which the amount certified for any prior period was greater or less than the amount which should have been paid to the State under this subsection for such period; and the Managing Trustee, prior to audit or settlement by the General Accounting Office, shall make payment from the Trust Funds at the time or times fixed by the Secretary, in accordance with such

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[1]P.L. 96-265, §304(d), struck out "(a)" and substituted "(a), (b)", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[2]See P.L. 96-265, "Social Security Disability Amendments of 1980", §304(g), with respect to implementation of decisions of administrative law judges.

[3]P.L. 96-265, §304(e)(1), struck out "has an agreement with the Secretary" and substituted "is making disability determinations under subsection (a)(1)", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[4]P.L. 96-265, §304(e)(2), struck out "may be mutually agreed upon" and substituted "determined by the Secretary", effective June 1981. For the effect on the current agreement, see preceding footnote.

[5]P.L. 96-265, §304(e)(3), struck out "carrying out the agreement under this section" and substituted "making disability determinations under subsection (a)(1)", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

certification. Appropriate adjustments between the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund with respect to the payments made under this subsection shall be made in accordance with paragraph (1) of subsection (g) of section 201 (but taking into account any refunds under subsection (f) of this section) to insure that the Federal Disability[1] Trust Fund is charged with all expenses incurred which are attributable to the administration of section 223 and the Federal Old-Age and Survivors Insurance Trust Fund is charged with all other expenses.

(f) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury of the United States for deposit in the Trust Funds.

(g) In the case of individuals in a State which does not undertake to perform disability determinations under subsection (a)(1), or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines[2], in the case of individuals outside the United States, and in the case of any class or classes of individuals for whom no State undertakes to make disability determinations[3], the determinations referred to in subsection (a) shall be made by the Secretary in accordance with regulations prescribed by him.

(i)[4](1)[5] In any case where an individual is or has been determined to be under a disability, the case shall be reviewed by the applicable State agency or the Secretary (as may be appropriate), for purposes of continuing eligibility, at least once every 3 years, subject to paragraph (2)[6]; except that where a finding has been made that such disability is permanent, such reviews shall be made at such times as the Secretary determines to be appropriate. Reviews of cases under the preceding sentence shall be in addition to, and shall not be considered as a substitute for, any other reviews which are required or provided for under or in the administration of this title.[7]

(2) The requirement of paragraph (1) that cases be reviewed at least every 3 years shall not apply to the extent that the Secretary

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[1]As in original. "Insurance" omitted.

[2]P.L. 96-265, §304(f)(1), struck out "has no agreement under subsection (b)" and substituted "does not undertake to perform disability determinations under subsection (a)(1), or which has been found by the Secretary to have substantially failed to make disability determinations in a manner consistent with his regulations and guidelines", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[3]P.L. 96-265, §304(f)(2), struck out "not included in an agreement under subsection (b)" and substituted "for whom no State undertakes to make disability determinations", effective June 1981. Any State that, on the effective date of the amendments made by this section, has in effect an agreement with the Secretary of Health and Human Services under §221(a) (as in effect prior to such amendments) will be deemed to have given to the Secretary the notice specified in §221(a)(1), as amended by this section, in lieu of continuing such agreement in effect after the effective date of such amendments. Thereafter, a State may notify the Secretary in writing that it no longer wishes to make disability determinations, effective not less than 180 days after the notification is given.

[4]As in original. No subsection (h) in law.

[5]P.L. 97-455, §3(1), inserted "(1)", effective January 12, 1983.

[6]P.L. 97-455, §3(2), inserted ", subject to paragraph (2)", effective January 12, 1983.

[7]P.L. 96-265, §311(a), added subsection (i), effective January 1, 1982.

See P.L. 96-265, "Social Security Disability Amendments of 1980", §312, with respect to the Secretary's report to Congress on the effects of certain amendments relating to disability recipients.

determines, on a State-by-State basis, that such requirement should be waived to insure that only the appropriate number of such cases are reviewed. The Secretary shall determine the appropriate number of cases to be reviewed in each State after consultation with the State agency performing such reviews, based upon the backlog of pending reviews, the projected number of new applications for disability insurance benefits, and the current and projected staffing levels of the State agency, but the Secretary shall provide for a waiver of such requirement only in the case of a State which makes a good faith effort to meet proper staffing requirements for the State agency and to process case reviews in a timely fashion. The Secretary shall report annually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the determinations made by the Secretary under the preceding sentence.[1]

(3) The Secretary shall report semiannually to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives with respect to the number of reviews of continuing disability carried out under paragraph (1), the number of such reviews which result in an initial termination of benefits, the number of requests for reconsideration of such initial termination or for a hearing with respect to such termination under subsection (d), or both, and the number of such initial terminations which are overturned as the result of a reconsideration or hearing.[2]

REHABILITATION SERVICES[3]

Referral for Rehabilitation Services

SEC. 222. [42 U.S.C. 422] (a) It is hereby declared to be the policy of the Congress that disabled individuals applying for a determination of disability, and disabled individuals who are entitled to child's insurance benefits, widow's insurance benefits, or widower's insurance benefits, shall be promptly referred to the State agency or agencies administering or supervising the administration of the State plan approved under the Vocational Rehabilitation Act[4] for necessary vocational rehabilitation services, to the end that the maximum number of such individuals may be rehabilitated into productive activity.

Deductions on Account of Refusal To Accept Rehabilitation Services

(b)(1) Deductions, in such amounts and at such time or times as the Secretary shall determine, shall be made from any payment or payments under this title to which an individual is entitled, until the total of such deductions equals such individual's benefit or benefits under sections 202 and 223 for any month in which such individual, if a child who has attained the age of eighteen and is entitled to child's insurance benefits, a widow, widower, surviving divorced wife, or surviving divorced husband[5] who has not attained age 60, or an

[1] P.L. 97-455, §3(3), added paragraph (2), effective January 12, 1983.
[2] P.L. 97-455, §6, added paragraph (3), effective January 12, 1983.
[3] P.L. 93-112, "Rehabilitation Act of 1973", §500(a), repealed P.L. 78-113, "Vocational Rehabilitation Act", effective December 25, 1973, and deemed references to be to the "Rehabilitation Act of 1973". For relevant material, see P.L. 93-112, "Rehabilitation Act of 1973", §§101, 501, 601-613.
[4] P.L. 78-113.
[5] P.L. 98-21, §309(l), struck out "or surviving divorced wife" and substituted ", surviving divorced

individual entitled to disability insurance benefits, refuses without good cause to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act[1]. Any individual who is a member or adherent of any recognized church or religious sect which teaches its members or adherents to rely solely, in the treatment and cure of any physical or mental impairment, upon prayer or spiritual means through the application and use of the tenets or teachings of such church or sect, and who, solely because of his adherence to the teachings or tenets of such church, or sect, refuses to accept rehabilitation services available to him under a State plan approved under the Vocational Rehabilitation Act[2], shall, for the purposes of the first sentence of this subsection, be deemed to have done so with good cause.

(2) Deductions shall be made from any child's insurance benefit to which a child who has attained the age of eighteen is entitled or from any mother's or father's[3] insurance benefit to which a person is entitled, until the total of such deductions equals such child's insurance benefit or benefits or such mother's or father's[4] insurance benefit or benefits under section 202 for any month in which such child or person entitled to mother's or father's[5] insurance benefits is married to an individual who is entitled to disability insurance benefits and in which such individual refuses to accept rehabilitation services and a deduction, on account of such refusal, is imposed under paragraph (1). if both this paragraph and paragraph (3) are applicable to a child's insurance benefit for any month, only an amount equal to such benefit shall be deducted.

(3) Deductions shall be made from any wife's, husband's, or child's insurance benefit, based on the wages and self-employment income of an individual entitled to disability insurance benefits, to which a wife, divorced wife, husband, divorced husband,[6] or child is entitled, until the total of such deductions equal[7] such wife's, husband's, or child's insurance benefit or benefits under section 202 for any month in which the individual, on the basis of whose wages and self-employment income such benefit was payable, refuses to accept rehabilitation services and deductions, on account of such refusal, are imposed under paragraph (1).

(4) The provisions of paragraph (1) shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

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wife, or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[1]P.L. 78-113.

[2]P.L. 78-113.

[3]P.L. 98-21, §309(m), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §309(m), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §309(m), inserted "or father's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §309(n), inserted "divorced husband,", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]As in original. Should be "equals".

Period of Trial Work

(c)(1) The term "period of trial work", with respect to an individual entitled to benefits under section 223, 202(d), 202(e), or 202(f), means a period of months beginning and ending as provided in paragraphs (3) and (4).

(2) For purposes of sections 216(i) and 223, any services rendered by an individual during a period of trial work shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. For purposes of this subsection the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(3) A period of trial work for any individual shall begin with the month in which he becomes entitled to disability insurance benefits, or, in the case of an individual entitled to benefits under section 202(d) who has attained the age of eighteen, with the month in which he becomes entitled to such benefits or the month in which he attains the age of eighteen, whichever is later, or, in the case of an individual entitled to widow's or widower's insurance benefits under section 202(e) or (f) who became entitled to such benefits prior to attaining age 60, with the month in which such individual becomes so entitled. Notwithstanding the preceding sentence, no period of trial work may begin for any individual prior to the beginning of the month following the month in which this paragraph is enacted[1]; and no such period may begin for an individual in a period of disability of such individual in which he had a previous period of trial work.

(4) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(A) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(B) the month in which his disability (as defined in section 223(d)) ceases (as determined after application of paragraph (2) of this subsection).

(5) In the case of an individual who becomes entitled to benefits under section 223 for any month as provided in clause (ii) of subsection (a)(1) of such section, the preceding provisions of this subsection shall not apply with respect to services in any month beginning with the first month for which he is so entitled and ending with the first month thereafter for which he is not entitled to benefits under section 223.

Costs of Rehabilitation Services From Trust Funds[2]

(d)(1) For purposes of making vocational rehabilitation services more readily available to disabled individuals who are—

(A) entitled to disability insurance benefits under section 223,

(B) entitled to child's insurance benefits under section 202(d) after having attained age 18 (and are under a disability),

(C) entitled to widow's insurance benefits under section 202(e) prior to attaining age 60, or

(D) entitled to widower's insurance benefits under section 202(f) prior to attaining age 60,

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[1]The month is October 1960; the paragraph was enacted on September 13, 1960 as part of P.L. 86-778 [74 Stat. 968].

[2]P.L. 97-35, §2209(a), amended subsection (d) in its entirety, effective with respect to services rendered on or after October 1, 1981.

to the end that savings will accrue to the Trust Funds as a result of rehabilitating such individuals into substantial gainful activity, there are authorized to be transferred from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund each fiscal year such sums as may be necessary to enable the Secretary to reimburse the State for the reasonable and necessary costs of vocational rehabilitation services furnished such individuals (including services during their waiting periods), under a State plan for vocational rehabilitation services approved under title I of the Rehabilitation Act of 1973[1] (29 U.S.C. 701 et seq.), which result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination that the vocational rehabilitation services contributed to the successful return of such individuals to substantial gainful activity and the determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria formulated by him.

(2) In the case of any State which is unwilling to participate or does not have a plan which meets the requirements of paragraph (1), the Commissioner of Social Security may provide such services in such State by agreement or contract with other public or private agencies, organizations, institutions, or individuals. The provision of such services shall be subject to the same conditions as otherwise apply under paragraph (1).

(3) Payments under this subsection shall be made in advance or by way of reimbursement, with necessary adjustments for overpayments and underpayments.

(4) Money paid from the Trust Funds under this subsection for the reimbursement of the costs of providing services to individuals who are entitled to benefits under section 223 (including services during their waiting periods), or who are entitled to benefits under section 202(d) on the basis of the wages and self-employment income of such individuals, shall be charged to the Federal Disability Insurance Trust Fund, and all other money paid from the Trust Funds under this subsection shall be charged to the Federal Old-Age and Survivors Insurance Trust Fund. The Secretary shall determine according to such methods and procedures as he may deem appropriate—

(A) the total amount to be reimbursed for the cost of services under this subsection, and

(B) subject to the provisions of the preceding sentence, the amount which should be charged to each of the Trust Funds.

(5) For purposes of this subsection the term "vocational rehabilitation services" shall have the meaning assigned to it in title I of the Rehabilitation Act of 1973[2] (29 U.S.C. 701 et seq.), except that such services may be limited in type, scope, or amount in accordance with regulations of the Secretary designed to achieve the purpose of this subsection.

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[1] P.L. 93-112.
[2] P.L. 93-112.

DISABILITY INSURANCE BENEFIT PAYMENTS [1]

Disability Insurance Benefits

SEC. 223. [42 U.S.C. 423] (a)(1) Every individual who—

(A) is insured for disability insurance benefits (as determined under subsection (c)(1)),

(B) has not attained the retirement age (as defined in section 216(l))[2],

(C) has filed application for disability insurance benefits, and

(D) is under a disability (as defined in subsection (d))

shall be entitled to a disability insurance benefit (i) for each month beginning with the first month after his waiting period (as defined in subsection (c)(2)) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to disability insurance benefits which terminated, or had a period of disability (as defined in section 216(i)) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains retirement age (as defined in section 216(l))[3], or, subject to subsection (e), the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the third month following the month in which his disability ceases; except that, in the case of an individual who has a period of trial work which ends as determined by application of section 222(c)(4)(A), the termination month shall be the earlier of (I) the third month following the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (II) the third month following the earliest month in which such individual engages or is determined able to engage in substantial gainful activity, but in no event earlier than the first month occurring after the 15 months following such period of trial work in which he engages or is determined able to engage in substantial gainful activity. No payment under this paragraph may be made to an individual who would not meet the definition of disability in subsection (d) except for paragraph (1)(B) thereof for any month in which he engages in substantial gainful activity, and no payment may be made for such month under subsection (b), (c), or (d) of section 202 to any person on the basis of the wages and self-employment income of such individual. In the case of a deceased individual, the requirement of subparagraph (C) may be satisfied by an application for benefits filed with respect to such individual within 3 months after the month in which he died.

(2) Except as provided in section 202(q) and section 215(b)(2)(A)(ii)[4],

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[1] See P.L. 96-265, "Social Security Disability Amendments of 1980", §505(a), with respect to experiments and demonstration projects regarding work activity of disabled beneficiaries, and §505(c), with respect to the Secretary's report to Congress on the experiments and demonstration projects conducted.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(d), with respect to deemed entitlement for hospital insurance benefits purposes.

[2] P.L. 98-21, §201(c)(3), struck out "age of sixty-five" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[3] P.L. 98-21, §201(c)(1)(E), struck out "age 65" and substituted "retirement age (as defined in section 216(l))", effective April 20, 1983.

[4] P.L. 96-265, §102(b), added "and section 215(b)(2)(A)(ii)", effective only with respect to monthly benefits payable on the basis of the wages and self-employment income of an individual who first becomes entitled to disability insurance benefits on or after July 1, 1980; except that the third sentence of §215(b)(2)(A) of the Act (as amended by P.L. 96-265, §102(a)) shall apply only with respect to monthly benefits payable for months beginning on or after July 1, 1981.

such individual's disability insurance benefit for any month shall be equal to his primary insurance amount for such month determined under section 215 as though he had attained age 62 in—

(A) the first month of his waiting period, or

(B) in any case in which clause (ii) of paragraph (1) of this subsection is applicable, the first month for which he becomes entitled to such disability insurance benefits,

and as though he had become entitled to old-age insurance benefits in the month in which the application for disability insurance benefits was filed and he was entitled to an old-age insurance benefit for each month for which (pursuant to subsection (b)) he was entitled to a disability insurance benefit. For the purposes of the preceding sentence, in the case of an individual who attained age 62 in or before the first month referred to in subparagraph (A) or (B) of such sentence, as the case may be, the elapsed years referred to in section 215(b)(3) shall not include the year in which he attained age 62, or any year thereafter.

Filing of Application

(b) An application for disability insurance benefits filed before the first month in which the applicant satisfies the requirements for such benefits (as prescribed in subsection (a)(1)) shall be deemed a valid application (and shall be deemed to have been filed in such first month) only if the applicant satisfies the requirements for such benefits before the Secretary makes a final decision on the application and no request under section 205(b) for notice and opportunity for a hearing thereon is made, or if such a request is made, before a decision based upon the evidence adduced at the hearing is made (regardless of whether such decision becomes the final decision of the Secretary). An individual who would have been entitled to a disability insurance benefit for any month had he filed application therefor before the end of such month shall be entitled to such benefit for such month if such application is filed before the end of the 12th month immediately succeeding such month.

Definitions of Insured Status and Waiting Period

(c) For purposes of this section—

(1) An individual shall be insured for disability insurance benefits in any month if—

(A) he would have been a fully insured individual (as defined in section 214) had he attained age 62 and filed application for benefits under section 202(a) on the first day of such month, and

(B)(i) he had not less than 20 quarters of coverage during the 40-quarter period which ends with the quarter in which such month occurred, or

(ii) if such month ends before the quarter in which he attains (or would attain) age 31, not less than one-half (and not less than 6) of the quarters during the period ending with the quarter in which such month occurred and beginning after he attained the age of 21 were quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter were quarters of coverage, or

(iii) in the case of an individual (not otherwise insured under clause (i)) who, by reason of section 216(i)(3)(B)(ii), had a prior period of disability that began during a period before the quarter in which he or she attained age 31, not less than one-half of the quarters beginning after such individual attained age 21 and ending with the quarter in which such month occurs are quarters of coverage, or (if the number of quarters in such period is less than 12) not less than 6 of the quarters in the 12-quarter period ending with such quarter are quarters of coverage;[1]

except[2] that the provisions of subparagraph (B) of this paragraph shall not apply in the case of an individual who is blind (within the meaning of "blindness" as defined in section 216(i)(1)). For purposes of subparagraph (B) of this paragraph, when the number of quarters in any period is an odd number, such number shall be reduced by one, and a quarter shall not be counted as part of any period if any part of such quarter was included in a period of disability unless such quarter was a quarter of coverage.

(2) The term "waiting period" means, in the case of any application for disability insurance benefits, the earliest period of five consecutive calendar months—

(A) throughout which the individual with respect to whom such application is filed has been under a disability, and

(B)(i) which begins not earlier than with the first day of the seventeenth month before the month in which such application is filed if such individual is insured for disability insurance benefits in such seventeenth month, or (ii) if he is not so insured in such month, which begins not earlier than with the first day of the first month after such seventeenth month in which he is so insured.

Notwithstanding the preceding provisions of this paragraph, no waiting period may begin for any individual before January 1, 1957.

Definition of Disability

(d)(1) The term "disability" means—

(A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(B) in the case of an individual who has attained the age of 55 and is blind (within the meaning of "blindness" as defined in section 216(i)(1)), inability by reason of such blindness to engage in substantial gainful activity requiring skills or abilities comparable to those of any gainful activity in which he has previously

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[1]P.L. 98-21, §332(b)(2), added clause (iii), effective with respect to applications for disability insurance benefits under §223 of the Act, and for disability determinations under §216(i) of such Act, filed after April 20, 1983, except that no monthly benefits under Title II of the Act shall be payable or increased by reason of this amendment for months before May 1983.

[2]P.L. 92-603, §117(b) [86 Stat. 1350], added this exception to §223(c)(1), locating it 4 spaces from the left margin, but incorporating "For purposes". Initially "For purposes" was flush with the left margin [P.L. 89-97, §344(b); 79 Stat. 413].

engaged with some regularity and over a substantial period of time.

(2) For purposes of paragraph (1)(A)—

(A) an individual (except a widow, surviving divorced wife, widower, or surviving divorced husband[1] for purposes of section 202(e) or (f)) shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(B) A[2] widow, surviving divorced wife, widower, or surviving divorced husband[3] shall not be determined to be under a disability (for purposes of section 202(e) or (f)) unless his or her physical or mental impairment or impairments are of a level of severity which under regulations prescribed by the Secretary is deemed to be sufficient to preclude an individual from engaging in any gainful activity.

(3) For purposes of this subsection, a "physical or mental impairment" is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 203(f)(8) which is applicable to individuals described in subparagraph (D) thereof. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 222(c), be found not to be disabled. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition)

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[1]P.L. 98-21, §309(o), struck out "or widower" and substituted "widower, or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]As in original. Should not be capitalized.

[3]P.L. 98-21, §309(o), struck out "or widower" and substituted "widower, or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

(5) An individual shall not be considered to be under a disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require. Any non-Federal hospital, clinic, laboratory, or other provider of medical services, or physician not in the employ of the Federal Government, which supplies medical evidence required and requested by the Secretary under this paragraph shall be entitled to payment from the Secretary for the reasonable cost of providing such evidence.

(6)(A) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with the commission by an individual (after the date of the enactment of this paragraph[1]) of an offense which constitutes a felony under applicable law and for which such individual is subsequently convicted, or which is aggravated in connection with such an offense (but only to the extent so aggravated), shall not be considered in determining whether an individual is under a disability.

(B) Notwithstanding any other provision of this title, any physical or mental impairment which arises in connection with an individual's confinement in a jail, prison, or other penal institution or correctional facility pursuant to such individual's conviction of an offense (committed after the date of the enactment of this paragraph[2]) constituting a felony under applicable law, or which is aggravated in connection with such a confinement (but only to the extent so aggravated), shall not be considered in determining whether such individual is under a disability for purposes of benefits payable for any month during which such individual is so confined.

(e) No benefit shall be payable under subsection (d)(1)(B)(ii), (e)(1)(B)(ii), or (f)(1)(B)(ii) of section 202 or under subsection (a)(1) of this section to an individual for any month, after the third month, in which he engages in substantial gainful activity during the 15-month period following the end of his trial work period determined by application of section 222(c)(4)(A).

[(f) Stricken.[3]]

Continued Payment of Disability Benefits During Appeal[4]

(g)(1) In any case where—

(A) an individual is a recipient of disability insurance benefits, or of child's, widow's, or widower's insurance benefits based on disability,

(B) the physical or mental impairment on the basis of which such benefits are payable is found to have ceased, not to have existed, or to no longer be disabling, and as a consequence such individual is determined not to be entitled to such benefits, and

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[1]October 19, 1980 [P.L. 96-473; 94 Stat. 2263].
[2]October 19, 1980 [P.L. 96-473; 94 Stat. 2263].
[3]P.L. 97-123, §6, added paragraph (3) to subsection (f), effective December 29, 1981.
P.L. 98-21, §339(b), struck out subsection (f), effective with respect to monthly benefits payable for months beginning on or after April 20, 1983.
[4]P.L. 97-455, §2, added subsection (g), effective January 12, 1983.

(C) a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, is pending with respect to the determination that he is not so entitled,

such individual may elect (in such manner and form and within such time as the Secretary shall by regulations prescribe) to have the payment of such benefits, and the payment of any other benefits under this Act based on such individual's wages and self-employment income (including benefits under title XVIII), continued for an additional period beginning with the first month beginning after the date of the enactment of this subsection[1] for which (under such determination) such benefits are no longer otherwise payable, and ending with the earlier of (i) the month preceding the month in which a decision is made after such a hearing, (ii) the month preceding the month in which no such request for a hearing or an administrative review is pending, or (iii) June 1984.

(2)(A) If an individual elects to have the payment of his benefits continued for an additional period under paragraph (1), and the final decision of the Secretary affirms the determination that he is not entitled to such benefits, any benefits paid under this title pursuant to such election (for months in such additional period) shall be considered overpayments for all purposes of this title, except as otherwise provided in subparagraph (B).

(B) If the Secretary determines that the individual's appeal of his termination of benefits was made in good faith, all of the benefits paid pursuant to such individual's election under paragraph (1) shall be subject to waiver consideration under the provisions of section 204.

(3) The provisions of paragraphs (1) and (2) shall apply with respect to determinations (that individuals are not entitled to benefits) which are made—

(A) on or after the date of the enactment of this subsection[2], or prior to such date but only on the basis of a timely request for a hearing under section 221(d), or for an administrative review prior to such hearing, and

(B) prior to December 7[3], 1983.

REDUCTION OF BENEFITS BASED ON DISABILITY[4]

SEC. 224. [42 U.S.C. 424a] (a) If for any month prior to the month in which an individual attains the age of 65[5]—

(1) such individual is entitled to benefits under section 223, and

(2) such individual is entitled for such month to periodic benefits on account of such individual's total or partial disability (whether or not permanent) under—

(A) a workmen's compensation law or plan of the United States or a State, or

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[1]January 12, 1983 [P.L. 97-455; 96 Stat. 2497].

[2]January 12, 1983 [P.L. 97-455; 96 Stat. 2497].

[3]P.L. 98-118, §2, struck out "October 1" and substituted "December 7", effective October 11, 1983.

[4]P.L. 97-35, §2208(a)(1), struck out "ON ACCOUNT OF RECEIPT OF WORKMEN'S COMPENSATION", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

[5]P.L. 97-35, §2208(a)(2), struck out "62" and substituted "65", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

(B) any other law or plan of the United States, a State, a political subdivision (as that term is used in section 218(b)(2)), or an instrumentality of two or more States (as that term is used in section 218(k)),

other than benefits payable under title 38, United States Code, benefits payable under a program of assistance which is based on need, benefits based on service all, or substantially all, of which was included under an agreement entered into by a State and the Secretary under section 218, and benefits under a law or plan of the United States based on service all or part of which is employment as defined in section 210,[1]

the total of his benefits under section 223 for such month and of any benefits under section 202 for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 223 and 202 for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under such laws or plans[2],

exceeds the higher of—

(5) 80 per centum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 223 for such month and of any monthly insurance benefits under section 202 for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 223 and 202 for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 223 and 202, after reduction under this section, with respect to all persons entitled to benefits on the basis of such individual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 215(b) as in effect prior to January 1979) used for purposes of computing his benefits under section 223, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a) and 211(b)(1)) for the five consecutive calendar years after 1950 for

[1]P.L. 97-35, §2208(a)(3), amended paragraph (2) in its entirety, effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

[2]P.L. 97-35, §2208(a)(4), struck out "the workmen's compensation law or plan" and substituted "such laws or plans", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 209(a) and 211(b)(1)) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 223(d)) and the five years preceding that year.

(b) If any periodic benefit for a total or partial disability under a law or plan described in subsection (a)(2)[1] is payable on other than a monthly basis (excluding a benefit payable as a lump sum except to the extent that it is a commutation of, or a substitute for, periodic payments), the reduction under this section shall be made at such time or times and in such amounts as the Secretary finds will approximate as nearly as practicable the reduction prescribed by subsection (a).

(c) Reduction of benefits under this section shall be made after any reduction under subsection (a) of section 203, but before deductions under such section and under section 222(b).

(d) The reduction of benefits required by this section shall not be made if the law or plan described in subsection (a)(2)[2] under which a periodic benefit is payable provides for the reduction thereof when anyone is entitled to benefits under this title on the basis of the wages and self-employment income of an individual entitled to benefits under section 223, and such law or plan so provided on February 18, 1981[3].

(e) If it appears to the Secretary that an individual may be eligible for periodic benefits under a[4] law or plan which would give rise to reduction under this section, he may require, as a condition of certification for payment of any benefits under section 223 to any individual for any month and of any benefits under section 202 for such month based on such individual's wages and self-employment income, that such individual certify (i) whether he has filed or intends to file any claim for such periodic benefits, and (ii) if he has so filed, whether there has been a decision on such claim. The Secretary may, in the absence of evidence to the contrary, rely upon such a certification by such individual that he has not filed and does not intend to file such a claim, or that he has so filed and no final decision thereon has been made, in certifying benefits for payment pursuant to section 205(i).

(f)(1) In the second calendar year after the year in which reduction under this section in the total of an individual's benefits under

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[1]P.L. 97-35, §2208(a)(5), struck out "under a workmen's compensation law or plan" and substituted "for a total or partial disability under a law or plan described in subsection (a)(2)", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

[2]P.L. 97-35, §2208(a)(6)(A), struck out "workmen's compensation law or plan" and substituted "law or plan described in subsection (a)(2)", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

[3]P.L. 97-35, §2208(a)(6)(B), added ", and such law or plan so provided on February 18, 1981", effective with respect to individuals who first become entitled to benefits under §223(a) for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

[4]P.L. 97-35, §2208(a)(7), struck out "workmen's compensation", effective with respect to individuals who first become entitled to benefits under §223(a) of the Act for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February 1981.

section 223 and any benefits under section 202 based on his wages and self-employment income was first required (in a continuous period of months), and in each third year thereafter, the Secretary shall redetermine the amount of such benefits which are still subject to reduction under this section; but such redetermination shall not result in any decrease in the total amount of benefits payable under this title on the basis of such individual's wages and self-employment income. Such redetermined benefit shall be determined as of, and shall become effective with, the January following the year in which such redetermination was made.

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a)) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a);

(B) the ratio of (i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability); and

(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

(g) Whenever a reduction in the total of benefits for any month based on an individual's wages and self-employment income is made under this section, each benefit, except the disability insurance benefit, shall first be proportionately decreased, and any excess of such reduction over the sum of all such benefits other than the disability insurance benefits shall then be applied to such disability insurance benefit.

(h)(1) Notwithstanding any other provision of law, the head of any Federal agency shall provide such information within its possession as the Secretary may require for purposes of making a timely determination of the amount of the reduction, if any, required by this section in benefits payable under this title, or verifying other information necessary in carrying out the provisions of this section.

(2) The Secretary is authorized to enter into agreements with States, political subdivisions, and other organizations that administer a law or plan subject to the provisions of this section, in order to obtain such information as he may require to carry out the provisions of this section.[1]

[1]P.L. 97-35, §2208(a)(8), added subsection (h), effective with respect to individuals who first become entitled to benefits under §223(a) of the Act for months beginning after August 1981, but only in the case of an individual who became disabled within the meaning of §223(d) after February

SUSPENSION OF BENEFITS BASED ON DISABILITY

SEC. 225. [42 U.S.C. 425] (a) If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 223, or that a child who has attained the age of eighteen and is entitled to benefits under section 202(d), or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 202(e), or that a widower or surviving divorced husband[1] who has not attained age 60 and is entitled to benefits under section 202(f), may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 202(d), 202(e), 202(f), or 223 until it is determined (as provided in section 221) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 221(b), the Secretary shall promptly notify the appropriate State of his action under this subsection and shall request a prompt determination of whether such individual's disability has ceased. For purposes of this subsection, the term "disability" has the meaning assigned to such term in section 223(d). Whenever the benefits of an individual entitled to a disability insurance benefit are suspended for any month, the benefits of any individual entitled thereto under subsection (b), (c), or (d) of section 202, on the basis of the wages and self-employment income of such individual, shall be suspended for such month. The first sentence of this subsection shall not apply to any child entitled to benefits under section 202(d), if he has attained the age of 18 but has not attained the age of 22, for any month during which he is a full-time student (as defined and determined under section 202(d)).

(b) Notwithstanding any other provision of this title, payment to an individual of benefits based on disability (as described in the first sentence of subsection (a)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's entitlement to such benefits is based, has or may have ceased, if—

(1) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973[2], and

(2) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

ENTITLEMENT TO HOSPITAL INSURANCE BENEFITS[3]

SEC. 226. [42 U.S.C. 426] (a) Every individual who—

(1) has attained age 65, and

1981.

[1]P.L. 98-21, §309(p), inserted "or surviving divorced husband", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 93-112.

[3]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(d), with respect to deemed entitlement for hospital insurance benefits purposes.

(2)(A)[1] is entitled to monthly insurance benefits under section 202,[2] would be entitled to those benefits except that he has not filed an application therefor (or application has not been made for a benefit the entitlement to which for any individual is a condition of entitlement therefor), or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month,[3] and, in conformity with regulations of the Secretary, files an application for hospital insurance benefits under part A of title XVIII,[4]

(B) is a qualified railroad retirement beneficiary, or[5]

(C)(i) would meet the requirements of subparagraph (A) upon filing application for the monthly insurance benefits involved if medicare qualified Federal employment (as defined in section 210(p)) were treated as employment (as defined in section 210(a)) for purposes of this title, and (ii) files an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of title XVIII,[6]

shall be entitled to hospital insurance benefits under part A of title XVIII for each month for which he meets the condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

(b) Every individual who—

(1) has not attained age 65, and

(2)(A) is entitled to, and has for 24 calendar months been entitled to, (i) disability insurance benefits under section 223 or (ii) child's insurance benefits under section 202(d) by reason of a disability (as defined in section 223(d)) or (iii) widow's insurance benefits under section 202(e) or widower's insurance benefits under section 202(f) by reason of a disability (as defined in section 223(d)), or

(B) is, and has been for not less than 24 months, a disabled qualified railroad retirement beneficiary, within the meaning of section 7(d) of the Railroad Retirement Act of 1974[7], or[8]

(C)(i) has filed an application, in conformity with regulations of the Secretary, for hospital insurance benefits under part A of title XVIII pursuant to this subparagraph, and

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[1]P.L. 97-248, §278(b)(2)(A)(i), inserted "(A)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[2]P.L. 97-35, §2203(e)(1), struck out "or", effective only with respect to individuals age 65 and over whose insured spouse attains age 62 after August 1982.

P.L. 97-248, §128(c)(2), amended that effective date by striking out "1982" and substituting "1981", effective as if it had been included originally in that provision of P.L. 97-35.

[3]P.L. 97-35, §2203(e)(2), inserted ", or would be entitled to such benefits but for the failure of another individual, who meets all the criteria of entitlement to monthly insurance benefits, to meet such criteria throughout a month,", effective only with respect to individuals age 65 and over whose insured spouse attains age 62 after August 1982.

P.L. 97-248, §128(c)(2), amended that effective date by striking out "1982" and substituting "1981", effective as if it had been included originally in that provision of P.L. 97-35.

[4]P.L. 97-248, §278(b)(2)(A)(ii), struck out "or is a qualified railroad retirement beneficiary,". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[5]P.L. 97-248, §278(b)(2)(A)(iii), added this subparagraph. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[6]P.L. 97-248, §278(b)(2)(A)(iii), added this subparagraph. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982" §278(c)(2), p. 793.

[7]P.L. 75-162 [as amended by P.L. 93-445].

[8]P.L. 97-248, §278(b)(2)(B)(i), amended subparagraph (B) in its entirety. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

(ii) would meet the requirements of subparagraph (A) (as determined under the disability criteria, including reviews, applied under this title), including the requirement that he has been entitled to the specified benefits for 24 months, if—

(I) medicare qualified Federal employment (as defined in section 210(p)) were treated as employment (as defined in section 210(a)) for purposes of this title, and

(II) the filing of the application under clause (i) of this subparagraph were deemed to be the filing of an application for the disability-related benefits referred to in clause (i), (ii), or (iii) of subparagraph (A),[1]

shall be entitled to hospital insurance benefits under part (A)[2] of title XVIII for each month beginning with the later of (I) July 1973 or (II) the twenty-fifth month of his entitlement or status as a qualified railroad retirement beneficiary described in paragraph (2), and ending (subject to the last sentence of this subsection) with the month following the month in which notice of termination of such entitlement to benefits or status as a qualified railroad retirement beneficiary described in paragraph (2) is mailed to him, or if earlier, with the month before the month in which he attains age 65. In applying the previous sentence in the case of an individual described in paragraph (2)(C), the "twenty-fifth month of his entitlement" refers to the first month after the twenty-fourth month of entitlement to specified benefits referred to in paragraph (2)(C) and "notice of termination of such entitlement" refers to a notice that the individual would no longer be determined to be entitled to such specified benefits under the conditions described in that paragraph.[3] For purposes of this subsection, an individual who has had a period of trial work which ended as provided in section 222(c)(4)(A), and whose entitlement to benefits or status as a qualified railroad retirement beneficiary as described in paragraph (2) has subsequently terminated, shall be deemed to be entitled to such benefits or to occupy such status (notwithstanding the termination of such entitlement or status) for the period of consecutive months throughout all of which the physical or mental impairment, on which such entitlement or status was based, continues, and throughout all of which such individual would have been entitled to monthly insurance benefits under title II or as a qualified railroad retirement beneficiary had such individual been unable to engage in substantial gainful activity, but not in excess of 24 such months.

(c) For purposes of subsection (a)—

(1) entitlement of an individual to hospital insurance benefits for a month shall consist of entitlement to have payment made under, and subject to the limitations in, part A of title XVIII on his behalf for inpatient hospital services, post-hospital extended care services, and[4] home health services (as such terms are defined in part C of title XVIII) furnished him in the United States (or outside the United States in the case of inpatient

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[1] P.L. 97-248, §278(b)(2)(B)(i), added subparagraph (C). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[2] As in original. Should be "A".

[3] P.L. 97-248, §278(b)(2)(B)(ii), added the preceding sentence. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[4] P.L. 96-499, §930(q)(1), struck out "post-hospital", effective with respect to services furnished on or after July 1, 1981.

hospital services furnished under the conditions described in section 1814(f)) during such month; except that (A) no such payment may be made for post-hospital extended care services furnished before January 1967, and (B) no such payment may be made for post-hospital extended care services[1] unless the discharge from the hospital required to qualify such services for payment under part A of title XVIII occurred (i) after June 30, 1966, or on or after the first day of the month in which he attains age 65, whichever is later, or (ii) if he was entitled to hospital insurance benefits pursuant to subsection (b), at a time when he was so entitled; and

(2) an individual shall be deemed entitled to monthly insurance benefits under section 202 or section 223, or to be a qualified railroad retirement beneficiary, for the month in which he died if he would have been entitled to such benefits, or would have been a qualified railroad retirement beneficiary, for such month had he died in the next month.

(d) For purposes of this section, the term "qualified railroad retirement beneficiary" means an individual whose name has been certified to the Secretary by the Railroad Retirement Board under section 7(d) of the Railroad Retirement Act of 1974[2]. An individual shall cease to be a qualified railroad retirement beneficiary at the close of the month preceding the month which is certified by the Railroad Retirement Board as the month in which he ceased to meet the requirements of section 7(d) of the Railroad Retirement Act of 1974[3].

(e)(1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(A) the term "age 60" in sections 202(e)(1)(B)(ii), 202(e)(4)[4], 202(f)(1)(B)(ii), and 202(f)(5)[5] shall be deemed to read "age 65"; and

(B) the phrase "before she attained age 60" in the matter following subparagraph (F) of section 202(e)(1) and the phrase "before he attained age 60" in the matter following subparagraph (F)[6] of section 202(f)(1) shall each be deemed to read "based on a disability".

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of an individual under age 65 who is entitled to benefits under section 202, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individual

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[1] P.L. 96-499, §930(q)(2), struck out "or post-hospital home health services", effective with respect to services furnished on or after July 1, 1981.

[2] P.L. 75-162 [as amended by P.L. 93-445].

[3] P.L. 75-162 [as amended by P.L. 93-445].

[4] P.L. 98-21, §131(a)(3)(H), struck out "(5)" and substituted "(4)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[5] P.L. 98-21, §131(b)(3)(G), struck out "(6)" and substituted "(5)", effective with respect to monthly benefits payable under Title II of the Act for months after December 1983.

[6] P.L. 95-216, §334(d)(4)(B), struck out "(G)" and substituted "(F)".

P.L. 97-455, §7(a), effective with respect to monthly benefits for months after November 1982, amended the effective date for that revision. For the new effective date, see P.L. 95-216, "Social Security Amendments of 1977", §334(f), (g) and (h), p. 781.

shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b), any disabled widow aged 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits), and any disabled widower aged 50 or older who is entitled to father's insurance benefits (and who would have been entitled to widower's insurance benefits by reason of disability if he had filed for such widower's benefits), shall, upon application for such hospital insurance benefits be deemed to have filed for such widow's or widower's insurance benefits.[1]

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) in the case of an individual described in clause (iii) of subsection (b)(2)(A), the entitlement of such individual to widow's or widower's insurance benefits under section 202(e) or (f) by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 202(j)(4).

(f) For purposes of subsection (b) (and for purposes of section 1837(g)(1) of this Act and section 7(d)(2)(ii) of the Railroad Retirement Act of 1974[2]), the 24 months for which an individual has to have been entitled to specified monthly benefits on the basis of disability in order to become entitled to hospital insurance benefits on such basis effective with any particular month (or to be deemed to have enrolled in the supplementary medical insurance program, on the basis of such entitlement, by reason of section 1837(f)), where such individual had been entitled to specified monthly benefits of the same type during a previous period which terminated—

(1) more than 60 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(i) or (B) of subsection (b)(2), or

(2) more than 84 months before the month in which his current disability began in any case where such monthly benefits were of the type specified in clause (A)(ii) or (A)(iii) of such subsection,

shall not include any month which occurred during such previous period.

(g) The Secretary and Director of the Office of Personnel Management shall jointly prescribe and carry out procedures designed to assure that all individuals who perform medicare qualified Federal employment are fully informed with respect to (1) their eligibility or potential eligibility for hospital insurance benefits (based on such employment) under part A of title XVIII, (2) the requirements for and conditions of such eligibility, and (3) the necessity of timely application as a condition of entitlement under subsection (b)(2)(C), giving particular attention to individuals who apply for an annuity under chapter 83 of title 5, United States Code, or under another

[1] P.L. 98-21, §309(q)(1), amended paragraph (3) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.
See P.L. 98-21, "Social Security Amendments of 1983", §309(q)(2), with respect to determining entitlement to hospital insurance benefits in certain cases.

[2] P.L. 75-162 [as amended by P.L. 93-445].

similar Federal retirement program, and whose eligibility for such an annuity is or would be based on a disability.[1]

(h)[2] For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 103 of the Social Security Amendments of 1965[3].

SPECIAL PROVISIONS RELATING TO COVERAGE UNDER MEDICARE PROGRAM FOR END STAGE RENAL DISEASE[4]

SEC. 226A. [42 U.S.C. 426-1] (a) Notwithstanding any provision to the contrary in section 226 or title XVIII, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 214), or would be fully or currently insured if (i) his service as an employee (as defined in the Railroad Retirement Act of 1974[5]) after December 31, 1936, were included within the meaning of the term "employment" for purposes of this title, and (ii) his medicare qualified Federal employment (as defined in section 210(p)) were included within the meaning of the term "employment" for purposes of this title;

(B)(i) is entitled to monthly insurance benefits under this title, (ii) is entitled to an annuity under the Railroad Retirement Act of 1974[6], or (iii) would be entitled to a monthly insurance benefit under this title if medicare qualified Federal employment (as defined in section 210(p))[7] were included within the meaning of the term "employment" for purposes of this title; or

(C) is the spouse or dependent child (as defined in regulations) of an individual described in subparagraph (A) or (B);[8]

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of title XVIII, subject to the deductible, premium, and coinsurance provisions of that title.

(b) Subject to subsection (c), entitlement of an individual to benefits under part A and eligibility to enroll under part B of title XVIII by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section

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[1] P.L. 97-248, §278(b)(4), added this subsection (g). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[2] P.L. 97-248, §278(b)(4), redesignated this subsection (g) as subsection (h). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[3] P.L. 89-97.

[4] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(d), with respect to deemed entitlement for hospital insurance benefits purposes.

[5] P.L. 75-162 [as amended by P.L. 93-445].

[6] P.L. 75-162 [as amended by P.L. 93-445].

[7] P.L. 97-448, §309(b)(1), struck out "210(p)) after December 31, 1982," and substituted "section 210(p))", effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[8] P.L. 97-248, §278(b)(2)(C), amended paragraph (1) in its entirety. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

1861(e) (and such additional requirements as the Secretary may prescribe under section 1881(b) for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c)Notwithstanding the provisions of subsection (b)—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1881(b), entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2)) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of title XVIII shall begin with the month in which such regular course of renal dialysis is resumed.

TRANSITIONAL INSURED STATUS

SEC. 227. [42 U.S.C. 427] (a) In the case of any individual who attains the age of 72 before 1969 but who does not meet the requirements of section 214(a), the 6 quarters of coverage referred to in paragraph (1) of section 214(a) shall, instead, be 3 quarters of coverage for purposes of determining entitlement of such individual to benefits under section 202(a), and of the[1] spouse[2] to benefits under section 202(b) or section 202(c)[3], but, in the case of such spouse[4], only if he or[5] she attains the age of 72 before 1969 and only with respect to

[1]P.L. 98-21, §304(a)(4), struck out "his" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §304(a)(1), struck out "wife" and substituted "spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §304(a)(5), inserted "or section 202(c)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §304(a)(1), struck out "wife" and substituted "spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §304(a)(3), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

spouse's[1] insurance benefits under section 202(b) or section 202(c)[2] for and after the month in which he or[3] she attains such age. For each month before the month in which any such individual meets the requirements of section 214(a), the amount of the[4] old-age insurance benefit shall, notwithstanding the provisions of section 202(a), be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i) and the amount of the spouse's[5] insurance benefit of the[6] spouse[7] shall, notwithstanding the provisions of section 202(b) or section 202(c)[8], be the larger of $32.20 or the amount most recently established in lieu thereof under section 215(i)[9].

(b) In the case of any individual who has died, who does not meet the requirements of section 214(a), and whose surviving spouse[10] attains age 72 before 1969, the 6 quarters of coverage referred to in paragraph (3) of section 214(a) and in paragraph (1) thereof shall, for purposes of determining the[11] entitlement to surviving spouse's[12] insurance benefits under section 202(e) or section 202(f)[13], instead be—

(1) 3 quarters of coverage if such surviving spouse[14] attains the age of 72 in or before 1966,

(2) 4 quarters of coverage if such surviving spouse[15] attains the age of 72 in 1967, or

(3) 5 quarters of coverage if such surviving spouse[16] attains the

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[1]P.L. 98-21, §304(a)(2), struck out "wife's" and substituted "spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §304(a)(5), inserted "or section 202(c)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §304(a)(3), inserted "he or", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]P.L. 98-21, §304(a)(4), struck out "his" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[5]P.L. 98-21, §304(a)(2), struck out "wife's" and substituted "spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §304(a)(4), struck out "his" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §304(a)(1), struck out "wife" and substituted "spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §304(a)(5), inserted "or section 202(c)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]The following rates have been applicable:
$35.00 & $17.50, Effective September 1965 (P.L. 89-97, §309(a));
$40.00 & $20.00, Effective February 1968 (P.L. 90-248, §102(a)(1));
$46.00 & $23.00, Effective January 1970 (P.L. 91-172, §1003(a)(1));
$48.30 & $24.20, Effective January 1971 (P.L. 92-5, §202(a)(1));
$58.00 & $29.00, Effective September 1972 (P.L. 92-336, §201(g)(1));
$64.40 & $32.20, Effective June 1974 (P.L. 93-233, §2(b)(1));
$69.60 & $34.80, Effective June 1975 (40 FR 22289; May 22, 1975);
$74.10 & $37.10, Effective June 1976 (41 FR 19999; May 14, 1976);
$78.50 & $39.30, Effective June 1977 (42 FR 24210; May 12, 1977);
$83.70 & $41.90, Effective June 1978 (43 FR 20867; May 15, 1978);
$92.00 & $46.10, Effective June 1979 (44 FR 28423; May 15, 1979);
$105.20 & $52.70, Effective June 1980 (45 FR 31781; May 14, 1980);
$117.00 & $58.70, Effective June 1981 (46 FR 27078; May 15, 1981);
$125.60 & $63.00, Effective June 1982 (47 FR 20863; May 14, 1982);
$129.90 & $65.20, Effective December 1983 (48 FR 27150; June 13, 1983).

[10]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §304(b)(3), struck out "her" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §304(b)(2), struck out "widow's" and substituted "surviving spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[13]P.L. 98-21, §304(b)(4), inserted "or section 202(f)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[14]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[15]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[16]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

age of 72 in 1968.

The amount of the[1] surviving spouse's[2] insurance benefit for each month shall, notwithstanding the provisions of section 202(e) or section 202(f)[3] (and section 202(m)), be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i)[4].

(c) In the case of any individual who becomes, or upon filing application therefor would become, entitled to benefits under section 202(a) by reason of the application of subsection (a) of this section, who dies, and whose surviving spouse[5] attains the age of 72 before 1969, such deceased individual shall be deemed to meet the requirements of subsection (b) of this section for purposes of determining entitlement of such surviving spouse[6] to surviving spouse's[7] insurance benefits under section 202(e) or section 202(f)[8].

BENEFITS AT AGE 72 FOR CERTAIN UNINSURED INDIVIDUALS[9]

Eligibility

SEC. 228. [42 U.S.C. 428] (a) Every individual who—

(1) has attained the age of 72,

(2)(A) attained such age before 1968, or (B) has not less than 3 quarters of coverage, whenever acquired, for each calendar year elapsing after 1966 and before the year in which he or she[10] attained such age,

(3) is a resident of the United States (as defined in subsection (e)), and is (A) a citizen of the United States or (B) an alien lawfully admitted for permanent residence who has resided in the United States (as defined in section 210(i)) continuously during the 5 years immediately preceding the month in which he or she[11] files application under this section, and

(4) has filed application for benefits under this section,

shall (subject to the limitations in this section) be entitled to a benefit under this section for each month beginning with the first month after September 1966 in which he or she[12] becomes so entitled

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[1]P.L. 98-21, §304(b)(3), struck out "her" and substituted "the", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §304(b)(2), struck out "widow's" and substituted "surviving spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]P.L. 98-21, §304(b)(4), inserted "or section 202(f)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[4]See §227(a) with respect to rate increases.

[5]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §304(b)(1), struck out "widow" and substituted "surviving spouse", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §304(b)(2), struck out "widow's" and substituted "surviving spouse's", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[8]P.L. 98-21, §304(b)(4), inserted "or section 202(f)", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[9]In P.L. 94-241, §1, effective March 24, 1976, Congress approved the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America". Section 502 of that Covenant [set out in P.L. 94-241, §1], provides that §228 of the Social Security Act is applicable to the Northern Mariana Islands, except as otherwise provided. Proclamation 4534 of The President, dated October 24, 1977, provides that §502 is effective at 11 A.M., January 9, 1978, Northern Mariana Islands local time.

See P.L. 98-21, "Social Security Amendments of 1983", §305(e), with respect to changes in payment amounts under this section.

[10]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[11]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[12]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable

to such benefits and ending with the month preceding the month in which he or she[1] dies. No application under this section which is filed by an individual more than 3 months before the first month in which he or she[2] meets the requirements of paragraphs (1), (2), and (3) shall be accepted as an application for purposes of this section.

Benefit Amount[3]

(b) The[4] benefit amount to which an individual is entitled under this section for any month shall be the larger of $64.40 or the amount most recently established in lieu thereof under section 215(i).[5]

Reduction for Governmental Pension System Benefits

(c)(1) The benefit amount of any individual under this section for any month shall be reduced (but not below zero) by the amount of any periodic benefit under a governmental pension system for which he or she[6] is eligible for such month.

(2) In the case of a husband and wife only one of whom is entitled to benefits under this section for any month, the benefit amount, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the spouse who is not entitled to benefits under this section is eligible for such month, over (B) the benefit amount as determined without regard to this subsection.[7]

(3) In the case of a husband or wife both of whom are entitled to benefits under this section for any month, the benefit amount of each spouse, after any reduction under paragraph (1), shall be further reduced (but not below zero) by the excess (if any) of (A) the total amount of any periodic benefits under governmental pension systems for which the other spouse is eligible for such month, over (B) the benefit amount of such other spouse as determined without regard to

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under Title II of the Act for months after April 1983.

[1]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3]The following rates have been applicable:
$35.00 & $17.50, Effective October 1966 (P.L. 89-368, §302(a));
$40.00 & $20.00, Effective February 1968 (P.L. 90-248, §102(b));
$46.00 & $23.00, Effective January 1970 (P.L. 91-172, §1003(b));
$48.30 & $24.20, Effective January 1971 (P.L. 92-5, §202(b));
$58.00 & $29.00, Effective September 1972 (P.L. 92-336, §201(g)(2));
$64.40 & $32.20, Effective June 1974 (P.L. 93-233, §2(b)(1));
$69.60 & $34.80, Effective June 1975 (40 FR 22289; May 22, 1975);
$74.10 & $37.10, Effective June 1976 (41 FR 19999; May 14, 1976);
$78.50 & $39.30, Effective June 1977 (42 FR 24210; May 12, 1977);
$83.70 & $41.90, Effective June 1978 (43 FR 20867; May 15, 1978);
$92.00 & $46.10, Effective June 1979 (44 FR 28423; May 15, 1979);
$105.20 & $52.70, Effective June 1980 (45 FR 31781; May 14, 1980);
$117.00 & $58.70, Effective June 1981 (46 FR 27076; May 15, 1981);
$125.60 & $63.00, Effective June 1982 (47 FR 20863; May 14, 1982);
$129.90 & $65.20, Effective December 1983 (48 FR 27150; June 13, 1983).

[4]P.L. 98-21, §305(a)(1), struck out "(1) Except as provided in paragraph (2), the" and substituted "The", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983..

[5]P.L. 98-21, §305(a)(2), struck out paragraph (2), effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[6]P.L. 98-21, §305(d)(1), inserted "or she", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[7]P.L. 98-21, §305(b), amended subparagraph (B) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

this subsection.[1]

(4) For purposes of this subsection, in determining whether an individual is eligible for periodic benefits under a governmental pension system—

(A) such individual shall be deemed to have filed application for such benefits,

(B) to the extent that entitlement depends on an application by such individual's spouse, such spouse shall be deemed to have filed application, and

(C) to the extent that entitlement depends on such individual or his or her[2] spouse having retired, such individual and his or her[3] spouse shall be deemed to have retired before the month for which the determination of eligibility is being made.

(5) For purposes of this subsection, if any periodic benefit is payable on any basis other than a calendar month, the Secretary shall allocate the amount of such benefit to the appropriate calendar months.

(6) If, under the foregoing provisions of this section, the amount payable for any month would be less than $1, such amount shall be reduced to zero. In the case of a husband and wife both of whom are entitled to benefits under this section for the month, the preceding sentence shall be applied with respect to the aggregate amount so payable for such month.

(7) If any benefit amount computed under the foregoing provisions of this section is not a multiple of $0.10, it shall be raised to the next higher multiple of $0.10.

(8) Under regulations prescribed by the Secretary, benefit payments under this section to an individual (or aggregate benefit payments under this section in the case of a husband and wife) of less than $5 may be accumulated until they equal or exceed $5.

Suspension for Months in Which Cash Payments Are Made Under Public Assistance

(d) The benefit to which an individual is entitled under this section for any month shall not be paid for such month if—

(1) such individual receives aid or assistance in the form of money payments in such month under a State plan approved under title I, X, XIV, or XVI or part A of title IV, or

(2) such individual's husband or wife receives such aid or assistance in such month, and under the State plan the needs of such individual were taken into account in determining eligibility for (or amount of) such aid or assistance,

unless the State agency administering or supervising the administration of such plan notifies the Secretary, at such time and in such manner as may be prescribed in accordance with regulations of the Secretary, that such payments to such individual (or such individual's husband or wife) under such plan are being terminated with the payment or payments made in such month and such individual is not

[1] P.L. 98-21, §305(c), amended paragraph (3) in its entirety, effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[2] P.L. 98-21, §305(d)(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

[3] P.L. 98-21, §305(d)(2), inserted "or her", effective only with respect to monthly benefits payable under Title II of the Act for months after April 1983.

an individual with respect to whom supplemental security income benefits are payable pursuant to title XVI or section 211 of Public Law 93-66 for the following month, nor shall such benefit be paid for such month if such individual is an individual with respect to whom supplemental security income benefits are payable pursuant to title XVI or section 211 of Public Law 93-66 for such month, unless the Secretary determines that such benefits are not payable with respect to such individual for the month following such month.

Suspension Where Individual Is Residing Outside the United States

(e) The benefit to which any individual is entitled under this section for any month shall not be paid if, during such month, such individual is not a resident of the United States. For purposes of this subsection, the term "United States" means the 50 States and the District of Columbia.

Treatment as Monthly Insurance Benefits

(f) For purposes of subsections (t) and (u) of section 202, and of section 1840, a monthly benefit under this section shall be treated as a monthly insurance benefit payable under section 202.

Annual Reimbursement of Federal Old-Age and Survivors Insurance Trust Fund

(g) There are authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for the fiscal year ending June 30, 1969, and for each fiscal year thereafter, such sums as the Secretary of Health, Education, and Welfare deems necessary on account of—

(1) payments made under this section during the second preceding fiscal year and all fiscal years prior thereto to individuals who, as of the beginning of the calendar year in which falls the month for which payment was made, had less than 3 quarters of coverage,

(2) the additional administrative expenses resulting from the payments described in paragraph (1), and

(3) any loss in interest to such Trust Fund resulting from such payments and expenses,

in order to place such Trust Fund in the same position at the end of such fiscal year as it would have been in if such payments had not been made.

Definitions

(h) For purposes of this section—

(1) The term "quarter of coverage" includes a quarter of coverage as defined in section 5(l) of the Railroad Retirement Act of 1937[1].

(2) The term "governmental pension system" means the insurance system established by this title or any other system or fund established by the United States, a State, any political subdivi-

[1]P.L. 75-162. P.L. 93-445, §101, amended the "Railroad Retirement Act of 1937" in its entirety, effective January 1, 1975. See P.L. 75-162, "Railroad Retirement Act of 1974", §2, instead.

sion of a State, or any wholly owned instrumentality of any one or more of the foregoing which provides for payment of (A) pensions, (B) retirement or retired pay, or (C) annuities or similar amounts payable on account of personal services performed by any individual (not including any payment under any workmen's compensation law or any payment by the Veterans' Administration as compensation for service-connected disability or death).

(3) The term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(4) The determination of whether an individual is a husband or wife for any month shall be made under subsection (h) of section 216 without regard to subsections (b) and (f) of section 216.

BENEFITS IN CASE OF MEMBERS OF THE UNIFORMED SERVICES[1]

SEC. 229. [42 U.S.C. 429] (a) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 210(m)) which was included in the term "employment" as defined in section 210(a) as a result of the provisions of section 210(l), shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

(2) in each calendar year occurring after 1977 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.[2]

(b) There are authorized to be appropriated to each of the Trust Funds, consisting of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund, for transfer on July 1 of each calendar year to such Trust Fund from amounts in the general fund in the Treasury not otherwise appropriated, an amount equal to the total of the additional amounts which would be appropriated to such Trust Fund for the fiscal year ending September 30 of such calendar year under section 201 or 1817 of this Act if the amounts of the additional wages deemed to have been paid for such calendar year by reason of subsection (a) constituted remuneration for employment (as defined in section 3121(b) of the Internal Revenue Code of 1954[3]) for purposes of the taxes imposed by sections 3101 and 3111 of the Internal Revenue Code of 1954[4]. Amounts authorized to be appropriated under this subsection for transfer on July 1 of each calendar year shall be determined on the basis of estimates of the

[1] See P.L. 98-21, "Social Security Amendments of 1983", §151(b)(3), with respect to certain reimbursements to the trust funds.

[2] See 38 U.S.C. 3103A and P.L. 97-306, "Veterans' Compensation, Education, and Employment Amendments of 1982", §408(b), with respect to denial of deemed wages in certain cases.

[3] See P.L. 83-591, "Internal Revenue Code of 1954", §3121, p. 817.

[4] See P.L. 83-591, "Internal Revenue Code of 1954", §3101, p. 813.

Secretary of the wages deemed to be paid for such calendar year under subsection (a); and proper adjustments shall be made in amounts authorized to be appropriated for subsequent transfer to the extent prior estimates were in excess of or were less than such wages so deemed to be paid.[1]

ADJUSTMENT OF THE CONTRIBUTION AND BENEFIT BASE

SEC. 230. [42 U.S.C. 430] (a) Whenever the Secretary pursuant to section 215(i) increases benefits effective with the December[2] following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) The amount of such contribution and benefit base shall (subject to subsection (c)) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) is made, and

(2) the ratio of (A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 209(a)) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subsection (a) is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a),

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) For purposes of this section, and for purposes of determining wages and self-employment income under sections 209, 211, 213, and 215 of this Act and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1954[3], (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 215(i) of this Act becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

[1] P.L. 98-21, §151(b)(1), amended subsection (b) in its entirety, effective with respect to wages deemed to have been paid for calendar years after 1983.

[2] P.L. 98-21, §111(a)(5), struck out "June" and substituted "December", effective with respect to cost-of-living increases determined under §215(i) for years after 1982.

[3] See P.L. 83-591, "Internal Revenue Code of 1954", §1402, p. 804.

(A) in 1978 shall be $17,700,
(B) in 1979 shall be $22,900,[1]
(C) in 1980 shall be $25,900, and
(D) in 1981 shall be $29,700.[2]

For purposes of determining under subsection (b) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) and to be the amount determined (with respect to the years involved) under that subsection. For purposes of determining employee and[3] employer tax liability under sections 3201(a) and[4] 3221(a) of the Internal Revenue Code of 1954[5], for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code[6] which results from the application of the 12.75[7] percent rate specified therein, and for purposes of computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974[8], except with respect to annuity amounts determined under section 3(a) or (3)[9](f)(3) of such Act[10], clause (2) and the preceding sentence of this subsection shall be disregarded.[11]

(d) Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 4022(b)(3)(B) of Public Law 93-406, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977[12] had remained in effect without change.

BENEFITS IN CASE OF CERTAIN INDIVIDUALS INTERNED DURING WORLD WAR II

SEC. 231. [42 U.S.C. 431] (a) For the purposes of this section the term "internee" means an individual who was interned during any period of time from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry.

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[1]In figuring special minimum benefits under the pre-1977 law for workers with many years of low earnings, for certain railroad retirement program purposes and for ERISA, the contribution and benefit base is: $18,900 for 1979 (44 FR 28881; 5-17-79); $20,400 for 1980 (45 FR 21715; 4-2-80); $22,200 for 1981 (46 FR 39477; 8-3-81); $24,300 for 1982 (47 FR 6098; 2-10-82); $26,700 for 1983 (48 FR 7814; 2-24-83); and $28,200 for 1984 (49 FR 9959; 3-16-84).

[2]In 1982 shall be $32,400 (46 FR 53791; October 30, 1981);
In 1983 shall be $35,700 (47 FR 51003; November 10, 1982);
In 1984 shall be $37,800 (48 FR 50414; November 1, 1983).

[3]P.L. 97-34, §741(d)(1)(A), inserted "employee and", effective with respect to compensation paid for services rendered after September 30, 1981.

[4]P.L. 97-34, §741(d)(1)(B), struck out "section" and substituted "sections 3201(a) and", effective with respect to compensation paid for services rendered after September 30, 1981.

[5]See P.L. 83-591, "Internal Revenue Code of 1954", §3221, p. 842.

[6]See P.L. 83-591, "Internal Revenue Code of 1954", §3211, p. 841.

[7]P.L. 97-34, §741(d)(1)(C), struck out "9.5" and substituted "11.75", effective with respect to compensation paid for services rendered after September 30, 1981.
P.L. 98-76, §211(d), struck out "11.75" and substituted "12.75", effective with respect to compensation paid for services rendered after December 31, 1983, and before January 1, 1985.

[8]P.L. 75-162 [as amended by P.L. 93-445].

[9]As in original. Should be "3".

[10]P.L. 75-162 [as amended by P.L. 93-445].

[11]P.L. 98-76, §225(a)(4), repealed this sentence, effective with respect to remuneration paid after December 31, 1984.

[12]December 20, 1977 [P.L. 95-216; 91 Stat. 1509].

(b)(1) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in the case of a death after such month, payable under this title on the basis of the wages and self-employment income of any individual, and for purposes of section 216(i)(3), such individual shall be deemed to have been paid during any period after he attained age 18 and for which he was an internee, wages (in addition to any wages actually paid to him) at a weekly rate of basic pay during such period as follows—

(A) in the case such individual was not employed prior to the beginning of such period, 40 multiplied by the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, United States Code, for each full week during such period; and

(B) in the case such individual who was employed prior to the beginning of such period, 40 multiplied by the greater of (i) the highest hourly rate received during any such employment, or (ii) the minimum hourly rate or rates in effect at any such time under section 206(a)(1) of title 29, United States Code, for each full week during such period.

(2) This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

(A) a larger such benefit or payment, as the case may be, would be payable without its application; or

(B) a benefit (other than a benefit payable in a lump-sum unless it is a commutation of, or a substitute for, periodic payments) which is based, in whole or in part, upon internment during any period from December 7, 1941, through December 31, 1946, at a place within the United States operated by the Government of the United States for the internment of United States citizens of Japanese ancestry, is determined by any agency or wholly owned instrumentality of the United States to be payable by it under any other law of the United States or under a system established by such agency or instrumentality.

The provisions of clause (B) shall not apply in the case of any monthly benefit or lump-sum death payment under this title if its application would reduce by $0.50 or less the primary insurance amount (as computed under section 215 prior to any recomputation thereof pursuant to subsection (f) of such section) of the individual on whose wages and self-employment income such benefit or payment is based. The provisions of clause (B) shall also not apply for purposes of section 216(i)(3).

(3) Upon application for benefits, a recalculation of benefits (by reason of this section), or a lump-sum death payment on the basis of the wages and self-employment income of any individual who was an internee, the Secretary of Health, Education, and Welfare shall accept the certification of the Secretary of Defense or his designee concerning any period of time for which an internee is to receive credit under paragraph (1) and shall make a decision without regard to clause (B) of paragraph (2) of this subsection unless he has been notified by some other agency or instrumentality of the United States that, on the basis of the period for which such individual was an internee, a benefit described in clause (B) of paragraph (2) has

been determined by such agency or instrumentality to be payable by it. If the Secretary of Health, Education, and Welfare has not been so notified, he shall then ascertain whether some other agency or wholly owned instrumentality of the United States has decided that a benefit described in clause (B) of paragraph (2) is payable by it. If any such agency or instrumentality has decided, or thereafter decides, that such a benefit is payable by it, it shall so notify the Secretary of Health, Education, and Welfare, and the Secretary shall certify no further benefits for payment or shall recompute the amount of any further benefits payable, as may be required by this section.

(4) Any agency or wholly owned instrumentality of the United States which is authorized by any law of the United States to pay benefits, or has a system of benefits which are based, in whole or in part, on any period for which any individual was an internee shall, at the request of the Secretary of Health, Education, and Welfare, certify to him, with respect to any individual who was an internee, such information as the Secretary deems necessary to carry out his functions under paragraph (3) of this subsection.

(c) There are authorized to be appropriated to the Trust Funds and the Federal Hospital Insurance Trust Fund for the fiscal year ending June 30, 1978, such sums as the Secretary determines would place the Trust Funds and the Federal Hospital Insurance Trust Fund in the position in which they would have been if the preceding provisions of this section had not been enacted.

PROCESSING OF TAX DATA[1]

SEC. 232. [42 U.S.C. 432] The Secretary of the Treasury shall make available information returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954[2], to the Secretary for the purposes of this title and title XI. The Secretary and the Secretary of the Treasury are authorized to enter into an agreement for the processing by the Secretary of information contained in returns filed pursuant to part III of subchapter A of chapter 61 of subtitle F of the Internal Revenue Code of 1954[3]. Notwithstanding the provisions of section 6103(a) of the Internal Revenue Code of 1954[4], the Secretary of the Treasury shall make available to the Secretary such documents as may be agreed upon as being necessary for purposes of such processing. The Secretary shall process any withholding tax statements or other documents made available to him by the Secretary of the Treasury pursuant to this section. Any agreement made pursuant to this section shall remain in full force and effect until modified or otherwise changed by mutual agreement of the Secretary and the Secretary of the Treasury.

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[1]See P.L. 88-525, "Food Stamp Act of 1977", §11(e)(19)(B)(i), with respect to disclosure of information available under §6103(l)(7) of P.L. 83-591, "Internal Revenue Code of 1954", for use in determining eligibility for food stamps.

See P.L. 83-591, "Internal Revenue Code of 1954", §6103(l) with respect to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, §7213(a)(1) with respect to the penalty for unauthorized disclosure of that tax return information, and §7217 with respect to civil damages for unauthorized disclosure of that tax return information.

[2]P.L. 83-591.

[3]P.L. 83-591.

[4]P.L. 83-591.

INTERNATIONAL AGREEMENTS

Purpose of Agreement

SEC. 233. [42 U.S.C. 433] (a) The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this title and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this title and the social security system of such foreign country.

Definitions

(b) For the purposes of this section—

(1) the term "social security system" means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term "period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this title or under the social security system of a country which is a party to an agreement entered into under this section.

Crediting Periods of Coverage; Conditions of Payment of Benefits

(c)(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 213 of this Act and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this title and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this title;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this title or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this title or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this title shall be based on the proportion of such individual's periods of coverage which was completed under this title.

(2) Any such agreement may provide that an individual who is entitled to cash benefits under this title shall, notwithstanding the provisions of section 202(t), receive such benefits while he resides in a foreign country which is a party to such agreement.[1]

(3) Section 226 shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this title and which the President deems appropriate to carry out the purposes of this section.

Regulations

(d) The Secretary of Health, Education, and Welfare shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

Reports to Congress; Effective Date of Agreements

(e)(1) Any agreement to establish a totalization arrangement entered into pursuant to this section shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this Act.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which at least one House of the Congress has been in session on each of 60[2] days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

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[1]P.L. 97-35, §2201(b)(12), amended paragraph (2) in its entirety, effective with respect to benefits payable for months after October 1981 in the case of individuals who initially become eligible for benefits under Title II of the Act after October 1981 and benefits payable for months after February 1982 in the case of all other individuals. Eligibility shall be determined in accordance with §215(a)(2)(A) and (a)(3)(B) of the Act.

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

[2]P.L. 98-21, §326(a), struck out "each House of the Congress has been in session on each of 90" and substituted "at least one House of the Congress has been in session on each of 60", effective April 20, 1983.

TITLE III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION[1]

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APPROPRIATIONS

SEC. 301. [42 U.S.C. 501] The amounts made available pursuant to section 901(c)(1)(A) for the purpose of assisting the States in the administration of their unemployment compensation laws shall be used as hereinafter provided.

PAYMENTS TO STATES

SEC. 302. [42 U.S.C. 502] (a) The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State which has an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act[3], such amounts as the Secretary of Labor determines to be necessary for the proper and efficient administration of such law during the fiscal year for which such payment is to be made. The Secretary of Labor's determination shall be based on (1) the population of the State; (2) an estimate of the number of persons covered by the State law and of the cost of proper and efficient administration of such law; and (3) such other factors as the Secretary of Labor finds relevant. The Secretary of Labor shall not certify for payment under this section in any fiscal year a total amount in excess of the amount appropriated therefor for such fiscal year.

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[1]The President's Reorganization Plan No. 2 of 1949, §1 (14 FR 5225, 63 Stat. 1065), transferred the Bureau of Employment Security, including the United States Employment Service, from the Federal Security Agency to the Department of Labor, effective August 20, 1949.

Title III of the Social Security Act is administered by the Department of Labor.

Title III appears in the United States Code as §§501-504 of subchapter III, chapter 7, Title 42.

Regulations of the Secretary of Labor relating to Title III are contained in chapter V, Title 20, and subtitle A, Title 29, Code of Federal Regulations. Regulations of the Secretary of Health and Human Services (formerly Secretary of Health, Education, and Welfare) relating to Title III are contained in subtitle A, Title 45, Code of Federal Regulations.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §604(c), with respect to an appropriation of funds to assist States in meeting administrative costs.

[2]This table of contents does not appear in the law.

[3]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954", see p. 849.

(b) Out of the sums appropriated therefor, the Secretary of the Treasury shall, upon receiving a certification under subsection (a), pay, through the Division of Disbursement[1] of the Treasury Department and prior to audit or settlement by the General Accounting Office, to the State agency charged with the administration of such law the amount so certified.

PROVISIONS OF STATE LAWS

SEC. 303. [42 U.S.C. 503] (a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act[2], includes provision for—

(1) Such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary of Labor shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due[3]; and

(2) Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary of Labor may approve; and

(3) Opportunity for a fair hearing, before an impartial tribunal, for all individuals whose claims for unemployment compensation are denied; and

(4) The payment of all money received in the unemployment fund of such State (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 1606(b) of the Federal Unemployment Tax Act[4]), immediately upon such receipt, to the Secretary of the Treasury to the credit of the unemployment trust fund[5] established by section 904; and

(5) Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 1606(b) of the Federal Unemployment Tax Act[6]: *Provided,* That an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration: *Provided further,* That the amounts specified by section 903(c)(2) may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices:[7] *Provided further,* That

[1] As in original.
[2] See P.L. 83-591, "Internal Revenue Code of 1954", §§3301-3311, p. 849.
[3] P.L. 91-648, §208(a)(2)(B), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all functions, powers, and duties of the Secretary of Labor under paragraph (1).
[4] See P.L. 83-591, "Internal Revenue Code of 1954", §3305(b), p. 867.
[5] As in original. Should be "Unemployment Trust Fund".
[6] See P.L. 83-591, "Internal Revenue Code of 1954", §3305(b), p. 867.
[7] Excuted as shown in Conference Report No. 98-47, p. 89, on P.L. 98-21.

nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor[1]; and

(6) The making of such reports, in such form and containing such information, as the Secretary of Labor may from time to time require, and compliance with such provisions as the Secretary of Labor may from time to time find necessary to assure the correctness and verification of such reports; and

(7) Making available upon request to any agency of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation and employment status of each recipient of unemployment compensation, and a statement of such recipient's rights to further compensation under such law; and

(8) Effective July 1, 1941, the expenditure of all moneys received pursuant to section 302 of this title solely for the purposes and in the amounts found necessary by the Secretary of Labor for the proper and efficient administration of such State law; and

(9) Effective July 1, 1941, the replacement, within a reasonable time, of any moneys received pursuant to section 302 of this title, which, because of any action or contingency, have been lost or have been expended for purposes other than, or in amounts in excess of, those found necessary by the Secretary of Labor for the proper administration of such State law.

(b) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—

(1) a denial, in a substantial number of cases, of unemployment compensation to individuals entitled thereto under such law; or

(2) a failure to comply substantially with any provision specified in subsection (a);

the Secretary of Labor shall notify such State agency that further payments will not be made to the State until the Secretary of Labor is satisfied that there is no longer any such denial or failure to comply. Until he is so satisfied he shall make no further certification to the Secretary of the Treasury with respect to such State: *Provided,* That there shall be no finding under clause (1) until the question of entitlement shall have been decided by the highest judicial authority given jurisdiction under such State law: *Provided further,* That any costs may be paid with respect to any claimant by a State and included as costs of administration of its law.

(c) The Secretary of Labor shall make no certification for payment to any State if he finds, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law—

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[1]P.L. 98-21, §523(b), inserted ": *Provided further,* That nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor", effective April 20, 1983.

(1) That[1] such State does not make its records available to the Railroad Retirement Board, and furnish to the Railroad Retirement Board at the expense of the Railroad Retirement Board such copies thereof as the Railroad Retirement Board deems necessary for its purposes;

(2) That[2] such State is failing to afford reasonable cooperation with every agency of the United States charged with the administration of any unemployment insurance law; or

(3) that[3] any interest required to be paid on advances under title XII of this Act has not been paid by the date on which such interest is required to be paid or has been paid directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund, until such interest is properly paid.[4]

(d)(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, to officers and employees of the Department of Agriculture and to officers or employees of any State food stamp agency any of the following information contained in the records of such State agency—

(i) wage information,

(ii) whether an individual is receiving, has received, or has made application for, unemployment compensation, and the amount of any such compensation being received (or to be received) by such individual,

(iii) the current (or most recent) home address of such individual, and

(iv) whether an individual has refused an offer of employment and, if so, a description of the employment so offered and the terms, conditions, and rate of pay therefor, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of determining an individual's eligibility for benefits, or the amount of benefits, under the food stamp program established under the Food Stamp Act of 1977[5].

(2) Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1), the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.

(3) For purposes of this subsection, the term "State food stamp agency" means any agency described in section 3(n)(1) of the Food Stamp Act of 1977[6] which administers the food stamp program

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[1]As in original.
[2]As in original.
[3]As in original.
[4]P.L. 98-21, §515(a), added paragraph (3), effective April 20, 1983.
[5]P.L. 88-525.
[6]P.L. 88-525.

established under such Act.[1]

(e)(1) The State agency charged with the administration of the State law—

(A) shall disclose, upon request and on a reimbursable basis, directly to officers or employees of any State or local child support enforcement agency any wage information contained in the records of such State agency, and

(B) shall establish such safeguards as are necessary (as determined by the Secretary of Labor in regulations) to insure that information disclosed under subparagraph (A) is used only for purposes of establishing and collecting child support obligations from, and locating, individuals owing such obligations.

For purposes of this subsection[2], the term "child support obligations" only includes obligations which are being enforced pursuant to a plan described in section 454 of this Act which has been approved by the Secretary of Health and Human Services under part D of title IV of this Act.

(2)(A) The State agency charged with the administration of the State law—

(i) shall require each new applicant for unemployment compensation to disclose whether or not such applicant owes child support obligatons[3] (as defined in the last sentence of paragraph (1)[4]),

(ii) shall notify the State or local child support enforcement agency enforcing such obligations, if any applicant discloses under clause (i) that he owes child support obligations and he is determined to be eligible for unemployment compensation, that such applicant has been so determined to be eligible,

(iii) shall deduct and withhold from any unemployment compensation otherwise payable to an individual—

(I) the amount specified by the individual to the State agency to be deducted and withheld under this clause,

(II) the amount (if any) determined pursuant to an agreement submitted to the State agency under section 454(19)(B)(i)[5] of this Act, or

(III) any amount otherwise required to be so deducted and withheld from such unemployment compensation through legal process (as defined in section 462(e)), and

(iv) shall pay any amount deducted and withheld under clause (iii) to the appropriate State or local child support enforcement agency.

Any amount deducted and withheld under clause (iii) shall for all purposes be treated as if it were paid to the individual as unemployment compensation and paid by such individual to the State or local child support enforcement agency in satisfaction of his child support obligations.

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[1] P.L. 96-249, §127(b)(1), added subsection (d), effective January 1, 1983.

See P.L. 88-525, "Food Stamp Act of 1977", §11(e)(19)(A), with respect to disclosure of information for use in determining eligibility for food stamps.

[2] P.L. 97-35, §2335(b)(3), struck out "the preceding sentence" and substituted "this subsection", effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 before October 1, 1982.

[3] As in original. Should be "obligations".

[4] P.L. 97-248, §175(a)(2), struck out "this subsection" and substituted "paragraph (1)", effective as of October 1, 1981.

[5] P.L. 97-248, §171(b)(3), struck out "454(20)(B)(i)" and substituted "454(19)(B)(i)", effective on and after August 13, 1981.

(B) For purposes of this paragraph, the term "unemployment compensation" means any compensation payable under the State law (including amounts payable pursuant to agreements under any Federal unemployment compensation law).

(C) Each State or local child support enforcement agency shall reimburse the State agency charged with the administration of the State unemployment compensation law for the administrative costs incurred by such State agency under this paragraph which are attributable to child support obligations being enforced by the State or local child support enforcement agency.[1]

(3)[2] Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that there is a failure to comply substantially with the requirements of paragraph (1) or (2)[3], the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such failure. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State.[4]

(4)[5] For purposes of this subsection, the term "State or local child support enforcement agency" means any agency of a State or political subdivision thereof operating pursuant to a plan described in the last sentence of paragraph (1).

JUDICIAL REVIEW

SEC. 304. [42 U.S.C. 504] (a) Whenever the Secretary of Labor—

(1) finds that a State law does not include any provision specified in section 303(a), or

(2) makes a finding with respect to a State under subsection (b), (c), (d), or (e) of section 303,

such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28, United States Code.

(b) The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

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[1]P.L. 97-35, §2335(b)(1), added this paragraph (2), effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 before October 1, 1982.

[2]P.L. 97-35, §2335(b)(1), redesignated paragraph (2) as paragraph (3), effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 before October 1, 1982.

[3]P.L. 97-35, §2335(b)(2), inserted "or (2)", effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 before October 1, 1982.

[4]See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §1025, with respect to withholding certification of State unemployment laws.

[5]P.L. 97-35, §2335(b)(1), redesignated paragraph (3) as paragraph (4), effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 before October 1, 1982.

(c) The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d)(1) The Secretary of Labor shall not withhold any certification for payment to any State under section 302 until the expiration of 60 days after the Governor of the State has been notified of the action referred to in paragraph (1) or (2) of subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary's action and including such other relief as may be necessary to preserve status or rights.

(e) Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

TITLE IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES[1]

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[1]Title IV of the Social Security Act is administered by the Department of Health and Human Services (formerly Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under Title IV, Part A. The Administration for Public Services, Office of Human Development Services, administers social services under Title IV, Parts B, C, and E. The Office of Child Support Enforcement (whose director is the Commissioner of Social Security) administers the child support program under Title IV, Part D.

Title IV appears in the United States Code as §§601-676, subchapter IV, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title IV are contained in chapters II, III, and XIII, Title 45, Code of Federal Regulations. Regulations of the Secretary of Labor relating to Title IV are contained in subtitle A, Title 29, and chapter 29, Title 41, Code of Federal Regulations.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in federally assisted programs.

See P.L. 89-73, "Older Americans Act of 1965", §213, with respect to eligibility for Federal surplus property.

See P.L. 89-97, "Social Security Amendments of 1965", §121(b), with respect to restrictions on payment to a State receiving payments under Title XIX.

See P.L. 93-247, "Child Abuse Prevention and Treatment Act", §4(b)(3) and §7, with respect to coordination between programs related to child abuse and neglect.

See P.L. 94-241, [Covenant to Establish Northern Mariana Islands], §1, for §502(a)(1) of H.J. Res. 549, with respect to participation by the Commonwealth of the Northern Mariana Islands on the same basis as Guam.

See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §309, with respect to postponement of imposition of certain penalties relating to child support requirements.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency.

[2]This table of contents does appear in the law.

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PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN[1]

APPROPRIATION

SECTION 401. [42 U.S.C. 601] For the purpose of encouraging the care of dependent children in their own homes or in the homes of relatives by enabling each State to furnish financial assistance and rehabilitation and other services, as far as practicable under the conditions in such State, to needy dependent children and the parents or relatives with whom they are living to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for aid and services to needy families with children.

STATE PLANS FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN[2]

SEC. 402. [42 U.S.C. 602] (a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any

[1]See 29 U.S.C. 49b(a), with respect to the supply of information.
See P.L. 88-525, "Food Stamp Act of 1977", §11(e), with respect to inquiry into the need for food stamps.
See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §508(b), with respect to provision for reimbursement of expenses of State employment offices.
See P.L. 95-30, "Tax Reduction and Simplification Act of 1977", §401(a), with respect to the work incentive program.
See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §101(b), with respect to the Secretary's report to Congress on foster care and adoption.
See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §159, with respect to exclusion from income of certain payments made by a State, and §161, with respect to delayed effective date in cases requiring conforming State legislation.
[2]See P.L. 95-171, [Social Security—Extension], §3(b), with respect to the provision of goods or services by check drawn to the order of the recipient and of the person supplying goods or services.

individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; (5) provide such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Administrator[1] shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Administrator to be necessary for the proper and efficient operation of the plan;[2] and (6) provide that the State agency will make such reports, in such form and containing such information, as the Administrator may from time to time require, and comply with such provisions as the Administrator may from time to time find necessary to assure the correctness and verification of such reports;

(7) except as may be otherwise provided in paragraph (8) or (31) and section 415[3], provide that the State agency—

(A) shall, in determining need, take into consideration any other income and resources of any child or relative claiming aid to families with dependent children, or of any other individual (living in the same home as such child and relative) whose needs the State determines should be considered in determining the need of the child or relative claiming such aid;

(B) shall determine ineligible for aid any family the combined value of whose resources (reduced by any obligations or debts with respect to such resources) exceeds $1,000 or such lower amount as the State may determine, but not including as a resource for purposes of this subparagraph a home owned and occupied by such child, relative, or other individual and so much of the family member's ownership interest in one automobile as does not exceed such amount as the Secretary may prescribe; and

(C) may, in the case of a family claiming or receiving aid under this part for any month, take into consideration as income (to the extent the State determines appropriate, as specified in such plan, and notwithstanding any other provision of law)—

(i) an amount not to exceed the value of the family's monthly allotment of food stamp coupons, to the extent such value duplicates the amount for food included in the maximum amount that would be payable under the

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[1]Functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare by section 5 of Reorganization Plan No. 1 of 1953 (42 U.S.C. 202 note), effective June 20, 1949.

P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary of Health, Education, and Welfare under clause (A). Functions vested in the U.S. Civil Service Commission were transferred to the Director of the Office of Personnel Management by section 102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note).

The Secretary of Health, Education, and Welfare was redesignated, effective May 4, 1980, as the Secretary of Health and Human Services under section 509 of the "Department of Education Organization Act" (P.L. 96-88, 93 Stat. 695).

[2]P.L. 97-35, §2353(b)(2), provides that this paragraph (5) applies to Puerto Rico, Guam, and the Virgin Islands, effective October 1, 1981.

P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed paragraph (5) as it had applied to Puerto Rico, Guam, and the Virgin Islands from October 1, 1975, to October 1, 1981.

[3]P.L. 97-35, §2320(b)(1), inserted "and section 415", effective with respect to individuals applying for aid to families with dependent children under any approved State plan for the first time after September 30, 1981.

State plan to a family of the same composition with no other income; and

(ii) an amount not to exceed the value of any rent or housing subsidy provided to such family, to the extent such value duplicates the amount for housing included in the maximum amount that would be payable under the State plan to a family of the same composition with no other income;[1] [2]

(8)(A) provide that, with respect to any month, in making the determination under paragraph (7), the State agency—

(i) shall disregard all of the earned income of each dependent child receiving aid to families with dependent children who is (as determined by the State in accordance

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[1]P.L. 97-35, §2302, amended paragraph (7) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

See P.L. 79-396, "National School Lunch Act", §12(e), with respect to exclusion from income and resources of assistance to children under that act.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 89-642, "Child Nutrition Act of 1966", §11(b), with respect to exclusion from income and resources of the value of assistance to children under that act.

See P.L. 90-248, "Social Security Amendments of 1967", §248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments made under that act.

See P.L. 93-112, "Rehabilitation Act of 1973", §613(c), with respect to conditional exclusion of wages, allowances, transportation reimbursement, and attendant care costs.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to exclusion from income and resources of payments to volunteers under that act.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico, Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (P.L. 86-372, §202).

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-181, "Supplemental Appropriations Act, 1984", §221, with respect to utility payments under P.L. 75-412, "United States Housing Act of 1937" and under §236 of P.L. 73-479, "National Housing Act".

with standards prescribed by the Secretary) a full-time student or a part-time student who is not a full-time employee attending a school, college, or university, or a course of vocational or technical training designed to fit him for gainful employment;

(ii) shall disregard from the earned income of any child or relative applying for or receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, the first $75 of the total of such earned income for such month (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month);

(iii) shall disregard from the earned income of any child, relative, or other individual specified in clause (ii), an amount equal to expenditures for care in such month for a dependent child, or an incapacitated individual living in the same home as the dependent child, receiving aid to families with dependent children and requiring such care for such month, to the extent that such amount (for each such dependent child or incapacitated individual) does not exceed $160 (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in full-time employment or not employed throughout the month);

(iv) shall disregard from the earned income of any child or relative receiving aid to families with dependent children, or of any other individual (living in the same home as such relative and child) whose needs are taken into account in making such determination, an amount equal to the first $30 of the total of such earned income not disregarded under any other clause of this subparagraph[1] plus one-third of the remainder thereof (but excluding, for purposes of this subparagraph, earned income derived from participation on a project maintained under the programs established by section 432(b)(2) and (3)); and

(v) may disregard the income of any dependent child applying for or receiving aid to families with dependent children which is derived from a program carried out under the Job Training Partnership Act[2] (as originally enacted[3]), but only in such amounts, and for such period of time (not to exceed six months with respect to earned income) as the Secretary may provide in regulations; and[4]

(B) provide that (with respect to any month) the State agency—

(i) shall not disregard, under clause (ii), (iii), or (iv) of subparagraph (A), any earned income of any one of the persons specified in subparagraph (A)(ii) if such person—

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[1]P.L. 97-300, §503(a)(2), struck out "already disregarded under the preceding provisions of this paragraph" and substituted "disregarded under any other clause of this subparagraph", effective October 13, 1982.

[2]P.L. 97-300.

[3]See P.L. 97-404, [Job Training Partnership Act, Amendments], §6, with respect to the interpretation of "originally enacted".

[4]P.L. 97-300, §503(a)(3), added clause (v), effective October 13, 1982.

(I) terminated his employment or reduced his earned income without good cause within such period (of not less than thirty days) preceding such month as may be prescribed by the Secretary;

(II) refused without good cause, within such period preceding such month as may be prescribed by the Secretary, to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined by the State or local agency administering the State plan, after notification by the employer, to be a bona fide offer of employment; or

(III) failed without good cause to make a timely report (as prescribed by the State plan pursuant to paragraph (14)) to the State agency of earned income received in such month; and

(ii)(I) shall not disregard, under subparagraph (A)(iv), any earned income of any of the persons specified in subparagraph (A)(ii), if, with respect to such month, the income of the persons so specified was in excess of their need, as determined by the State agency pursuant to paragraph (7) (without regard to subparagraph (A)(iv) of this paragraph), unless the persons received aid under the plan in one or more of the four months preceding such month and subparagraph (A)(iv) has not already been applied to their income for four consecutive months while they were receiving aid under the plan; and

(II) in the case of the earned income of a person with respect to whom subparagraph (A)(iv) has been applied for four consecutive months, shall not apply the provisions of subparagraph (A)(iv) for so long as he continues to receive aid under the plan and shall not apply such provisions to any month thereafter until the expiration of an additional period of twelve consecutive months during which he is not a recipient of such aid;[1]

(9) provide safeguards which restrict the use of[2] disclosure of information concerning applicants or recipients to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part B, C, or D of this title or under title I, X, XIV, XVI, XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental entity which is authorized by law to conduct such audit or activity; and the

[1] P.L. 97-35, §2301, amended paragraph (8) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2] As in original. Probably should be "or".

safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an entity referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient;[1]

(10)(A) provide[2] that all individuals wishing to make application for aid to families with dependent children shall have opportunity to do so, and that aid to families with dependent children shall, subject to paragraphs (25) and (26), be furnished with reasonable promptness to all eligible individuals; and

(B) provide that an application for aid under the plan will be effective no earlier than the date such application is filed with the State agency or local agency responsible for the administration of the State plan, and the amount payable for the month in which the application becomes effective, if such application becomes effective after the first day of such month, shall bear the same ratio to the amount which would be payable if the application had been effective on the first day of such month as the number of days in the month including and following the effective date of the application bears to the total number of days in such month;[3]

(11) provide for prompt notice (including the transmittal of all relevant information) to the State child support collection agency (established pursuant to part D of this title) of the furnishing of aid to families with dependent children with respect to a child who has been deserted or abandoned by a parent (including a child born out of wedlock without regard to whether the paternity of such child has been established); (12) provide, effective October 1, 1950, that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act;

(13) provide that—

(A) except as provided in subparagraph (B), the State agency (i) will determine a family's eligibility for aid for a month on the basis of the family's income, composition, resources, and other similar relevant circumstances during such month, and (ii) will determine the amount of such aid on the basis of the income and other relevant circumstances in the first or, at the option of the State but only where the Secretary determines it to be appropriate, second month preceding such month; and

(B) in the case of the first month, or at the option of the State but only where the Secretary determines it to be appropriate, the first and second months, in a period of consecutive months for which aid is payable, the State agency will determine the amount of aid on the basis of the family's income and other relevant circumstances in such first or second month;[4]

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[1]See P.L. 82-183, "Revenue Act of 1951", §618 [the Jenner Amendment], with respect to a condition under which grant-in-aid or other payment may not be withheld.

[2]P.L. 97-248, §152(a)(1), struck out "provide, effective July 1, 1951," and substituted "(A) provide", effective October 1, 1982.

[3]P.L. 97-248, §152(a)(3), added subparagraph (B), effective October 1, 1982.

[4]P.L. 97-35, §2315(a), added this paragraph (13). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed paragraph (13) as it had applied to

(14) (A) provide that the State agency will require each family to which it furnishes aid to families with dependent children (or to which it would provide such aid but for paragraph (22) or (32)) to report, as a condition to the continued receipt of such aid (or to continuing to be deemed to be a recipient of such aid), each month to the State agency on—

(i) the income received, family composition, and other relevant circumstances during the prior month; and

(ii) the income and resources it expects to receive, or any changes in circumstances affecting continued eligibility or benefit amount, that it expects to occur, in that month (or in future months);

except that with the prior approval of the Secretary the State may select categories of recipients who may report at specified less frequent intervals upon the State's showing to the satisfaction of the Secretary that to require individuals in such categories to report monthly would result in unwarranted expenditures for administration of this paragraph; and

(B) that, in addition to whatever action may be appropriate based on other reports or information received by the State agency, the State agency will take prompt action to adjust the amount of assistance payable, as may be appropriate, on the basis of the information contained in the report (or upon the failure of the family to furnish a timely report), and will give an appropriate explanatory notice, concurrent with its action, to the family;[1]

(15) provide[2] (A) for the development of a program, for each appropriate relative and dependent child receiving aid under the plan and for each appropriate individual (living in the same home as a relative and child receiving such aid) whose needs are taken into account in making the determination under clause (7), for preventing or reducing the incidence of births out of wedlock and otherwise strengthening family life, and for implementing such program by assuring that in all appropriate cases (including minors who can be considered to be sexually active) family planning services are offered to them and are provided promptly (directly or under arrangements with others) to all individuals voluntarily requesting such services, but acceptance of family planning services provided under the plan shall be voluntary on the part of such members and individuals and shall not be a prerequisite to eligibility for or the receipt of any other service under the plan; and (B) to the extent that services provided under this clause[3] are furnished by the staff of the State agency or the local agency administering the State plan in each of the political subdivisions of the State, for the establishment of a single organizational unit in such State or local agency, as the case may be, responsible for the furnishing of such services;[4] (16) provide that

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Puerto Rico, Guam, and the Virgin Islands from October 1, 1975, to October 1, 1981.

[1]P.L. 97-35, §2315(a), added this paragraph (14). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed paragraph (14) as it had applied to Puerto Rico, Guam, and the Virgin Islands from October 1, 1975, to October 1, 1981.

[2]P.L. 97-35, §2353(c)(1), effective October 1, 1981, struck out "as part of the program of the State for the provision of services under title XX" which had been applicable to all jurisdictions except Guam, Puerto Rico, and the Virgin Islands for October 1, 1975, to October 1, 1981.

[3]P.L. 97-35, §2353(c)(2), struck out "or clause (14)", effective October 1, 1981.

[4]P.L. 97-35, §2353(b)(2), provides that this paragraph (15) applies to Puerto Rico, Guam, and the Virgin Islands, effective October 1, 1981.

P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed paragraph (15) as it had applied to

where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect, abuse, or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have;[1]

(17) provide that if a person specified in paragraph (8)(A)(i) or (ii) receives in any month an amount of income which, together with all other income for that month not excluded under paragraph (8), exceeds the State's standard of need applicable to the family of which he is a member—

(A) such amount of income shall be considered income to such individual in the month received, and the family of which such person is a member shall be ineligible for aid under the plan for the whole number of months that equals (i) the sum of such amount and all other income received in such month, not excluded under paragraph (8), divided by (ii) the standard of need applicable to such family, and

(B) any income remaining (which amount is less than the applicable monthly standard) shall be treated as income received in the first month following the period of ineligibility specified in subparagraph (A);[2]

(18) provide that no family shall be eligible for aid under the plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), other than paragraph (8)(A)(v)[3], exceeds 150 percent of the State's standard of need for a family of the same composition;[4] (19) provide—

(A) that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, employment, and other employment-related activities (including employment search, not to exceed eight weeks in total in each year) with the Secretary of Labor as provided by regulations issued by him, unless such individual is—

(i) a child who is under age 16 or attending, full-time, an elementary, secondary, or vocational (or technical) school;[5]

(ii) a person who is ill, incapacitated, or of advanced age;

(iii) a person so remote from a work incentive project that his effective participation is precluded;

(iv) a person whose presence in the home is required because of illness or incapacity of another member of the household;

(v) the parent or other relative of a child under the age of six who is personally providing care for the child with only very brief and infrequent absences from the child;[6]

Puerto Rico, Guam, and the Virgin Islands from October 1, 1975, to October 1, 1981.

[1]See P.L. 95-608, "Indian Child Welfare Act of 1978", §§2-113, with respect to Indian child welfare.

[2]P.L. 97-35, §2304, added paragrah (17). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §159, with respect to exclusion from income of certain payments made by a State.

[3]P.L. 97-300, §503(b), inserted ", other than paragraph (8)(A)(v)", effective October 13, 1982.

[4]P.L. 97-35, §2303, added paragraph (18). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5]P.L. 97-35, §2314(a), amended clause (i) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliaton Act of 1981", §2321, p. 785.

[6]P.L. 97-35, §2314(b), amended clause (v) in its entirety. For the effective date, see P.L. 97-35,

(vi) the parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative[1] is in the home and not excluded by clause (i), (ii), (iii), or (iv) of this subparagraph (unless he has failed to register as required by this subparagraph, or has been found by the Secretary of Labor to have refused without good cause to participate under a work incentive program or accept employment as described in subparagraph (F) of this paragraph;

(vii) a person who is working not less than 30 hours per week; or

(viii) the parent of a child who is deprived of parental support or care by reason of the unemployment of a parent, if the other parent (who is the principal earner, as defined in section 407(d)) is not excluded by the preceding clauses of this subparagraph;[2]

and that any individual referred to in clause (v) shall be advised of his or[3] her option to register, if he or[4] she so desires, pursuant to this paragraph, and shall be informed of the child care services (if any) which will be available to him or[5] her in the event he or[6] she should decide so to register;

(B) that aid to families with dependent children under the plan will not be denied by reason of such registration or the individual's certification to the Secretary of Labor under subparagraph (G) of this paragraph, or by reason of an individual's participation on a project under the program established by section 432(b)(2) or (3);

(C) for arrangements to assure that there will be made a non-Federal contribution to the work incentive programs established by part C by appropriate agencies of the State or private organizations of 10 per centum of the cost of such programs, as specified in section 435(b);

(D) that (i) training incentives authorized under section 434 shall be disregarded in determining the needs of an individual under section 402(a)(7), and (ii) in determining such individual's needs the additional expenses attributable to his participation in a program established by section 432(b)(2) or (3) shall be taken into account;

[(E) Stricken.[7]]

"Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

P.L. 97-35, §2313(b)(1), amended clause (v), effective October 1, 1981.

[1]P.L. 97-35, §2313(b)(2), struck out "mother or other female caretaker of a child, if the father or another adult male relative" and substituted "parent or other caretaker of a child who is deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent, if another adult relative". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2]P.L. 97-35, §2313(b)(3)(C), added clause (viii). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3]P.L. 97-35, §2313(b)(4)(A), inserted "his or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[4]P.L. 97-35, §2313(b)(4)(B), inserted "he or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5]P.L. 97-35, §2313(b)(4)(C), inserted "him or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[6]P.L. 97-35, §2313(b)(4)(D), inserted "he or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[7]P.L. 92-223, [§3(a)(5); 85 Stat. 804].

(F) that if (and for such period as is prescribed under joint regulations of the Secretary and the Secretary of Labor) any child, relative or individual has been found by the Secretary of Labor under section 433(g) to have refused without good cause to participate under a work incentive program established by part C with respect to which the Secretary of Labor has determined his participation is consistent with the purposes of such part C, or to have refused without good cause to accept employment in which he is able to engage which is offered through the public employment offices of the State, or is otherwise offered by an employer if the offer of such employer is determined, after notification by him, to be a bona fide offer of employment—

(i) if the relative makes such refusal, such relative's needs shall not be taken into account in making the determination under clause (7), and aid for any dependent child in the family in the form of payments of the type described in section 406(b)(2) (which in such a case shall be without regard to clauses (A) through (E) thereof) or section 408[1] will be made;

(ii) if the parent who has been designated as the principal earner, for purposes of section 407, makes such refusal, aid will be denied to all members of the family;[2]

(iii)[3] aid with respect to a dependent child will be denied if a child who is the only child receiving aid in the family makes such refusal;

(iv)[4] if there is more than one child receiving aid in the family, aid for any such child will be denied (and his needs will not be taken into account in making the determination under clause (7)) if that child makes such refusal; and

(v)[5] if such individual makes such refusal, such individual's needs shall not be taken into account in making the determination under clause (7);

(G) that the State agency will have in effect a special program which (i) will be administered by a separate administrative unit (which will, to the maximum extent feasible, be located in the same facility as that utilized for the administration of programs established pursuant to section 432(b)(1), (2), or (3)) and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (ii) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (A) of this paragraph[6] (I) in accordance with the order

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[1]As in original. P.L. 96-272, §101(a)(2)(A), repealed §408.

[2]P.L. 97-35, §2313(c)(1), added clause (ii). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3]P.L. 97-35, §2313(c)(1), redesignated clause (ii) as clause (iii). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[4]P.L. 97-35, §2313(c)(1), redesignated clause (iii) as clause (iv). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5]P.L. 97-35, §2313(c)(1), redesignated clause (iv) as clause (v). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[6]As in original. Should have punctuation to signal beginning of a series.

of priority listed in section 433(a), such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training provided under section 432(b)(1), (2), or (3), and will, when arrangements have been made to provide necessary supportive services, including child care, certify to the Secretary of Labor those individuals who are ready for employment or training under section 432(b)(1), (2), or (3), (II) such social and supportive services as are necessary to enable such individuals as determined appropriate by the Secretary of Labor actively to engage in other employment-related (including but not limited to employment search) activities, as well as timely payment for necessary employment search expenses, and (III) for a period deemed appropriate by the Secretary of Labor after such an individual accepts employment, such social and supportive services as are reasonable and necessary to enable him to retain such employment, (iii) will participate in the development of operational and employability plans under section 433(b); and (iv) provides for purposes of clause (ii), that, when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available; and

(H) that an individual participating in employment search activities shall not be referred to employment opportunities which do not meet the criteria for appropriate work and training to which an individual may otherwise be assigned under section 432(b)(1), (2), or (3);

(20) provide that the State has in effect a State plan for foster care and adoption assistance approved under part E of this title;[1]

(21) provide—

(A) that, for purposes of this part, participation in a strike shall not constitute good cause to leave, or to refuse to seek or accept employment; and

(B)(i) that aid to families with dependent children is not payable to a family for any month in which any caretaker relative with whom the child is living is, on the last day of such month, participating in a strike, and (ii) that no individual's needs shall be included in determining the amount of aid payable for any month to a family under the plan if, on the last day of such month, such individual is participating in a strike;[2]

(22) provide that the State agency will promptly take all necessary steps to correct any overpayment or underpayment of aid under the State plan, and, in the case of—

(A) an overpayment to an individual who is a current recipient of such aid, recovery will be made by repayment by the individual or by reducing the amount of any future aid payable to the family of which he is a member, except that

[1]See P.L. 95-608, "Indian Child Welfare Act of 1978", §§2-113, with respect to Indian child welfare.

[2]P.L. 97-35, §2310, added paragraph (21). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

such recovery shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income (without application of paragraph (8)), is less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income (and, in the case of an individual to whom no payment is made for a month solely by reason of recovery of an overpayment, such individual shall be deemed to be a recipient of aid for such month);

(B) an overpayment to any individual who is no longer receiving aid under the plan, recovery shall be made by appropriate action under State law against the income or resources of the individual or the family; and

(C) an underpayment, the corrective payment shall be disregarded in determining the income of the family, and shall be disregarded in determining its resources in the month the corrective payment is made and in the following month;[1]

(23) provide that by July 1, 1969, the amounts used by the State to determine the needs of individuals will have been adjusted to reflect fully changes in living costs since such amounts were established, and any maximums that the State imposes on the amount of aid paid to families will have been proportionately adjusted; (24) provide that if an individual is receiving benefits under title XVI, then, for the period for which such benefits are received, such individual shall not be regarded as a member of a family for purposes of determining the amount of the benefits of the family under this title and his income and resources shall not be counted as income and resources of a family under this title;

(25) provide (A) that, as a condition of eligibility under the plan, each applicant for or recipient of aid shall furnish to the State agency his social security account number (or numbers, if he has more than one such number), and (B) that such State agency shall utilize such account numbers, in addition to any other means of identification it may determine to employ in the administration of such plan;

(26) provide that, as a condition of eligibility for aid, each applicant or recipient will be required—

(A) to assign the State any rights to support from any other person such applicant may have (i) in his own behalf or in behalf of any other family member for whom the applicant is applying for or receiving aid, and (ii) which have accrued at the time such assignment is executed,

(B) to cooperate with the State (i) in establishing the paternity of a child born out of wedlock with respect to whom aid is claimed, and (ii) in obtaining support payments for such applicant and for a child with respect to whom such aid is claimed, or in obtaining any other payments or property due such applicant or such child, unless (in either case) such applicant or recipient is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary,

[1]P.L. 97-35, §2318, added paragraph (22). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

which standards shall take into consideration the best interests of the child on whose behalf aid is claimed; and that, if the relative with whom a child is living is found to be ineligible because of failure to comply with the requirements of subparagraphs (A) and (B) of this paragraph, any aid for which such child is eligible will be provided in the form of protective payments as described in section 406(b)(2) (without regard to subparagraphs (A) through (E) of such section);

(27) provide that the State has in effect a plan approved under part D and operate a child support program in conformity with such plan;

(28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D, and retained by the State under section 457, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part;

(29) effective October 1, 1979, provide that wage information available from the Social Security Administration under the provisions of section 411 of this Act, and wage information available (under the provisions of section 3304(a)(16) of the Federal Unemployment Tax Act[1]) from agencies administering State unemployment compensation laws, shall be requested and utilized to the extent permitted under the provisions of such sections; except that the State shall not be required to request such information from the Social Security Administration where such information is available from the agency administering the State unemployment compensation laws;

(30) at the option of the State, provide for the establishment and operation, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under subsection (d), of an automated statewide management information system designed effectively and efficiently, to assist management in the administration of the State plan for aid to families with dependent children approved under this part, so as (A) to control and account for (i) all the factors in the total eligibility determination process under such plan for aid (including but not limited to (I) identifiable correlation factors (such as social security numbers, names, dates of birth, home addresses, and mailing addresses (including postal ZIP codes), of all applicants and recipients of such aid and the relative with whom any child who is such an applicant or recipient is living) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether an individual is or has been receiving benefits from more than one jurisdiction, (II) checking records of applicants and recipients of such aid on a periodic basis with other agencies, both intra-

[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3304(a)(16), p. 865.

and inter-State, for determination and verification of eligibility and payment pursuant to requirements imposed by other provisions of this Act), (ii) the costs, quality, and delivery of funds and services furnished to applicants for and recipients of such aid, (B) to notify the appropriate officials of child support, food stamp, social service, and medical assistance programs approved under title XIX whenever the case becomes ineligible or the amount of aid or services is changed, and (C) to provide for security against unauthorized access to, or use of, the data in such system;[1]

(31) provide that, in making the determination for any month under paragraph (7), the State agency shall take into consideration so much of the income of the dependent child's stepparent living in the same home as such child as exceeds the sum of (A) the first $75 of the total of such stepparent's earned income for such month (or such lesser amount as the Secretary may prescribe in the case of an individual not engaged in fulltime[2] employment or not employed throughout the month), (B) the State's standard of need under such plan for a family of the same composition as the stepparent and those other individuals living in the same household as the dependent child and claimed by such stepparent as dependents for purposes of determining his Federal personal income tax liability but whose needs are not taken into account in making the determination under paragraph (7), (C) amounts paid by the stepparent to individuals not living in such household and claimed by him as dependents for purposes of determining his Federal personal income tax liability, and (D) payments by such stepparent of alimony or child support with respect to individuals not living in such household;[3]

(32) provide that no payment of aid shall be made under the plan for any month if the amount of such payment, as determined in accordance with the applicable provisions of the plan and of this part, would be less than $10, but an individual with respect to whom a payment of aid under the plan is denied solely by reason of this paragraph is deemed to be a recipient of aid but shall not be eligible to participate in a community work experience program;[4]

(33) provide that in order for any individual to be considered a dependent child, a caretaker relative whose needs are to be taken into account in making the determination under paragraph (7), or any other person whose needs should be taken into account in making such a determination with respect to the child or relative, such individual must be either (A) a citizen, or (B) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 207(c) of the Immigration and Nationality Act[5] (or of section

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[1] P.L. 96-265, §406(b)(1)(C), added paragraph (30), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[2] As in original. Probably should be "full-time".

[3] P.L. 97-35, §2306(a)(3), added paragraph (31). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[4] P.L. 97-35, §2316(3), added paragraph (32). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5] P.L. 82-414.

203(a)(7) of such Act prior to April 1, 1980), or as a result of the application of the provisions of section 208 or 212(d)(5) of such Act);[1]

(34) provide that both the standard of need applied to a family and the amount of aid determined to be payable, when not a whole dollar amount, shall be rounded to the next lower whole dollar amount;[2]

(35) at the option of the State, provide—

(A) that as a condition of eligibility for aid under the State plan of any individual claiming such aid who is required to register pursuant to paragraph (19)(A) (or who would be required to register under paragraph (19)(A) but for clause (iii) thereof), including all such individuals or only such groups, types, or classes thereof as the State agency may designate for purposes of this paragraph, such individual will be required to participate in a program of employment search—

(i) beginning at the time he applies for such aid (or an application including his need is filed) and continuing for a period (prescribed by the State) of not more than eight weeks (but this requirement may not be used as a reason for any delay in making a determination of an individual's eligibility for aid or in issuing a payment to or in behalf of any individual who is otherwise eligible for such aid); and

(ii) at such time or times after the close of the period prescribed under clause (i) as the State agency may determine but not to exceed a total of 8 weeks in any 12 consecutive months;

(B) that any individual participating in a program of employment search under this paragraph will be furnished such transportation and other services, or paid (in advance or by way of reimbursement) such amounts to cover transportation costs and other expenses reasonably incurred in meeting requirements imposed on him under this paragraph, as may be necessary to enable such individual to participate in such program; and

(C) that, in the case of an individual who fails without good cause to comply with requirements imposed upon him under this paragraph, the sanctions imposed by paragraph (19)(F) shall be applied in the same manner as if the individual had made a refusal of the type which would cause the provisions of such paragraph (19)(F) to be applied (except that the State may at its option, for purposes of this paragraph, reduce the period for which such sanctions would otherwise be in effect)[3]; and

(36) provide, at the option of the State, that in making the determination for any month under paragraph (7) the State agency shall not include as income any support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State

[1]P.L. 97-35, §2320(a)(3), added paragraph (33), effective August 13, 1981.
[2]P.L. 97-248, §151(a)(3), added paragraph (34), effective October 1, 1982.
[3]P.L. 97-248, §154(a)(3), added paragraph (35), effective October 1, 1982.

agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which[1] is (i) assistance furnished in kind by a private nonprofit agency, or (ii) assistance furnished by a supplier of home heating oil or gas, by an entity whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.[2]

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes as a condition of eligibility for aid to families with dependent children, a residence requirement which denies aid with respect to any child residing in the State (1) who has resided in the State for one year immediately preceding the application for such aid, or (2) who was born within one year immediately preceding the application, if the parent or other relative with whom the child is living has resided in the State for one year immediately preceding the birth.

(c) The Secretary shall, on the basis of his review of the reports received from the States under clause (15) of subsection (a), compile such data as he believes necessary and from time to time publish his findings as to the effectiveness of the programs developed and administered by the States under such clause. The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the programs developed and administered by each State under such clause (15).

(d)(1) For purposes of this part, an individual's "income" shall also include, to the extent and under the circumstances prescribed by the Secretary, an amount (which shall be treated as earned income for purposes of this part) equal to the earned income advance amount (under section 3507(a) of the Internal Revenue Code of 1954[3]) that is (or, upon the filing of an earned income eligibility certificate, would be) payable to such individual.[4]

(2) In any case in which such advance payments for a taxable year made by all employers to an individual under section 3507 of such Code[5] exceed the amount of such individual's earned income credit allowable under section 43 of such Code[6] for such year, so that such individual is liable under section 43(g) of such Code[7] for a tax equal

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[1]P.L. 98-21, §404(b), struck out "assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)" and substituted "support or maintenance assistance furnished to or on behalf of the family which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support and maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which", effective with respect to months which begin after April 1982 and end before October 1, 1984.

[2]P.L. 97-424, §545(b)(3), added paragraph (36), effective with respect to home energy assistance received in months beginning on or after January 6, 1983, and prior to July 1, 1985.

See P.L. 97-424, "Surface Transportation Assistance Act of 1982", §545(d), with respect to the implementation, results, and recommendations regarding this provision.

[3]See P.L. 83-591, "Internal Revenue Code of 1954", §3507(a), p. 887.

[4]P.L. 97-35, §2305, amended paragraph (1) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5]See P.L. 83-591, "Internal Revenue Code of 1954", §3507, p. 887.

[6]P.L. 83-591.

[7]P.L. 83-591.

to such excess, such individual's benefit amount must be appropriately adjusted so as to provide payment to such individual of an amount equal to the amount of the benefits lost by such individual on account of such excess advance payments.

(e)(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in subsection (a)(30), unless he finds that such document, when implemented, will generally carry out the objectives of the statewide management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed statewide management system, including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such statewide management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) includes cost-benefit analyses of each alternative management system, data processing services and equipment, and a cost allocation plan containing the basis for rates, both direct and indirect, to be in effect under such statewide management system,

(F) contains an implementation plan with charts of development events, testing descriptions, proposed acceptance criteria, and backup and fallback procedures to handle possible failure of contingencies, and

(G) contains a summary of proposed improvement of such statewide management system in terms of qualitative and quantitative benefits.

(2)(A) The Secretary shall, on a continuing basis, review, assess, and inspect the planning, design, and operation of, statewide management information systems referred to in section 403(a)(3)(B), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under such section and the conditions specified under subsection (a)(30) of this section.

(B) If the Secretary finds with respect to any statewide management information system referred to in section 403(a)(3)(B) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.[1]

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[1]P.L. 96-265, §406(b)(2), added a second subsection (d), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

P.L. 96-473, §6(f)(3), redesignated this second subsection (d) as subsection (e), effective October 19, 1980.

PAYMENT TO STATES[1]

SEC. 403. [42 U.S.C. 603] (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to families with dependent children under the State plan[2]—

(A) five-sixths of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $18 multiplied by the total number of recipients of aid to families with dependent children for such month (which total number, for purposes of this subsection, means (i) the number of individuals with respect to whom such aid in the form of money payments is paid for such month, plus (ii) the number of individuals, not counted under clause (i)[3], with respect to whom payments described in section 406(b)(2) are made in such month and included as expenditures for purposes of this paragraph or paragraph (2)); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (i) the product of $32 multiplied by the total number of recipients of aid to families with dependent children (other than such aid in the form of foster care) for such month, plus (ii) the product of $100 multiplied by the total number of recipients of aid to families with dependent children in the form of foster care for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to families with dependent children under the State plan[4], not counting so much of any expenditure with respect to any month as exceeds $18 multiplied by the total number of recipients of such aid for such month; and[5]

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Educa-

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[1]See 29 U.S.C. 49-49n, "Wagner-Peyser Act", with respect to the United States Employment Service.

See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §508(b), with respect to provision for reimbursement of expenses of State employment offices.

[2]P.L. 97-35, §2184(b)(1)(A), struck out "(including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)", effective August 13, 1981.

[3]P.L. 97-35, §2184(b)(1)(B), struck out "other individuals with respect to whom expenditures were made in such month as aid to families with dependent children in the form of medical or any other type of remedial care, plus (iii) the number of individuals, not counted under clause (i) or (ii)" and substituted "individuals, not counted under clause (i)", effective August 13, 1981.

[4]P.L. 97-35, §2184(b)(1)(C), struck out "(including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)", effective August 13, 1981.

[5]See §§1108 and 1118 of Social Security Act.

tion, and Welfare for the proper and efficient administration of the State plan—

[(A) Repealed.[1]]

(B) 90 per centum of so much of the sums expended during such quarter as are attributable to the planning, design, development, or installation of such statewide mechanized claims processing and information retrieval systems as (i) meet the conditions of section 402(a)(30), and (ii) the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of State plans approved under title XIX, and State programs with respect to which there is Federal financial participation under title XX, and[2]

(C)[3] one-half of the remainder of such expenditures (including as expenditures under this subparagraph the value of any services furnished, and the amount of any payments made (to cover expenses incurred by individuals under a program of employment search), under section 402(a)(35)(B))[4],

except that no payment shall be made with respect to amounts expended in connection with the provision of any service described in section 2002(a)[5] of this Act other than services furnished under section 402(a)(35)(B) (as described in the parenthetical phrase in subparagraph (C)), and other than services[6] the provision of which is required by section 402(a)(19) to be included in the plan of the State, or which is a service provided in connection with a community work experience program or work supplementation program under section 409 or 414[7]; and[8]

[(4) Repealed.[9]]

(5) in the case of any State, an amount equal to 50 per centum of the total amount expended under the State plan during such quarter as emergency assistance to needy families with children.[10]

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[1]P.L. 97-35, §2319(a), repealed subparagraph (A) as in effect in the 50 States and the District of Columbia, effective with respect to expenditures made after September 30, 1981.

P.L. 97-35, §2319(b), repealed clause (iii) as in effect in Puerto Rico, Guam, and the Virgin Islands, effective with respect to expenditures made after September 30, 1981.

[2]P.L. 96-265, §406(a)(3), added subparagraph (B), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[3]P.L. 96-265, §406(a)(2), redesignated subparagraph (B) as subparagraph (C), effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[4]P.L. 97-248, §154(b)(1), inserted "(including as expenditures under this subparagraph the value of any services furnished, and the amount of any payments made (to cover expenses incurred by individuals under a program of employment search), under section 402(a)(35)(B))", effective October 1, 1982.

[5]P.L. 97-35, §2353(d), struck out "(1)", effective October 1, 1981.

[6]P.L. 97-248, §154(b)(2), inserted "furnished under section 402(a)(35)(B) (as described in the parenthetical phrase in subparagraph (C)), and other than services", effective October 1, 1982.

[7]P.L. 97-35, §2307(b), inserted ", or which is a service provided in connection with a community work experience program or work supplementation program under section 409 or 414". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[8]P.L. 97-35, §2353(b)(2), provides that this paragraph (3) applies also to Guam, Puerto Rico, and the Virgin Islands, effective October 1, 1981. See P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2353(b)(2), with respect to similar application of §402(a)(5) and (a)(15).

P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed the paragraph (3) which had applied to Guam, Puerto Rico, and the Virgin Islands from October 1, 1975, to October 1, 1981.

[9]P.L. 90-248, §201(e)(3), 81 Stat. 880.

[10]P.L. 97-35, §2317(a), struck from subsection (a) the first unnumbered paragraph following paragraph (5). P.L. 97-35, §2317(a), was executed as if §2317(a) had stricken the first two sentences following paragraph (5) [as shown in S. Rep. 97-139 on S-1377, p. 628]. Those two sentences read as follows: "The number of individuals with respect to whom payments described in section 406(b)(2)

[1] No payment shall be made under this subsection with respect to amounts paid to supplement or otherwise increase the amount of aid to families with dependent children found payable in accordance with section 402(a)(13) if such amount is determined to have been paid by the State in recognition of the current or anticipated needs of a family (other than with respect to the first or first and second months of eligibility), but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 402(a)(13)(A)(ii), shall not be considered income within the meaning of section 402(a)(13) for the purpose of determining the amount of aid in the succeeding months[2]. [3]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of dependent children in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which the Secretary of Health, Education, and Welfare finds that his estimate for any prior quarter was greater or less than the

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are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 20 per centum of the number of other recipients of aid to families with dependent children for such month. In computing such 20 percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 402(a)(19)(F) or section 402(a)(26).". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[1] P.L. 97-248, §156(b), struck from this paragraph the following sentence: "In the case of calendar quarters beginning after September 30, 1977, and prior to April 1, 1978, the amount to be paid to each State (as determined under the preceding provisions of this subsection or section 1118, as the case may be) shall be increased in accordance with the provisions of subsection (i) of this section.", effective October 1, 1982.

[2] P.L. 97-248, §157(a), inserted ", but any such amount, if determined to have been paid by the State in recognition of the difference between the current or anticipated needs of a family for a month based upon actual income or other relevant circumstances for such month, and the needs of such family for such month based upon income and other relevant circumstances as retrospectively determined under section 402(a)(13)(A)(ii), shall not be considered income within the meaning of section 402(a)(13) for the purpose of determining the amount of aid in the succeeding months", effective October 1, 1982.

[3] P.L. 97-35, §2315(b), added the preceding sentence. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

See P.L. 81-474, [Navajo and Hopi Indians], §9, with respect to additional payments with respect to Navajo and Hopi Indians.

See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §508(b), with respect to expenses of State employment offices.

See P.L. 95-171, [Social Security—Extension], §3(b), with respect to use of joint checks.

amount which should have been paid to the State for such quarter, (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to aid to families with dependent children furnished under the State plan, and (C) reduced by such amount as is necessary to provide the "appropriate reimbursement of the Federal Government" that the State is required to make under section 457 out of that portion of child support collections retained by it pursuant to such section; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement[1] of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) Notwithstanding any other provision of this Act, the Federal share of assistance payments under this part shall be reduced with respect to any State for any fiscal year after June 30, 1973, by one percentage point for each percentage point by which the number of individuals certified, under the program of such State established pursuant to section 402(a)(19)(G), to the local employment office of the State as being ready for employment or training under section 432(b)(1), (2), or (3), is less than 15 per centum of the average number of individuals in such State who, during such year, are required to be registered pursuant to section 402(a)(19)(A).

(d)(1) Notwithstanding any provision of subsection (a)(3), the applicable rate under such subsection shall be 90 per centum[2] with respect to social and supportive services provided pursuant to section 402(a)(19)(G). In determining the amount of the expenditures made under a State plan for any quarter with respect to social and supportive services pursuant to section 402(a)(19)(G), there shall be included the fair and reasonable value of goods and services furnished in kind from the State or any political subdivision thereof.

(2) Of the sums authorized by section 401 to be appropriated for the fiscal year ending June 30, 1973, not more than $750,000,000 shall be appropriated to the Secretary for payments with respect to services to which paragraph (1) applies.[3]

[(e) Repealed.[4]]

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[1] As in original.

[2] P.L. 97-35, §2319(c), struck out "subparagraph (A) of subsection (a)(3) the rate specified in such subparagraph shall be 90 per centum (rather than 75 per centum)" and substituted "any provision of subsection (a)(3), the applicable rate under such subsection shall be 90 per centum". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3] See P.L. 95-30, "Tax Reduction and Simplification Act of 1977", §401(a), with respect to the work incentive program.

[4] P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed subsection (e) as in effect with respect to the fifty States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands before October 1975 and with respect to Guam, Puerto Rico, and the Virgin Islands from October 1975 to October 1981.

(f) Notwithstanding any other provision of this section, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters in fiscal years beginning after June 30, 1973, be reduced by 1 per centum (calculated without regard to any reduction under section 403(g)) of such amount if such State—

(1) in the immediately preceding fiscal year failed to carry out the provisions of section 402(a)(15)(B) as pertain to requiring the offering and arrangement for provision of family planning services; or

(2) in the immediately preceding fiscal year (but, in the case of the fiscal year beginning July 1, 1972, only considering the third and fourth quarters thereof), failed to carry out the provisions of section 402(a)(15)(B) of the Social Security Act with respect to any individual who, within such period or periods as the Secretary may prescribe, has been an applicant for or recipient of aid to families with dependent children under the plan of the State approved under this part.

[(g) Repealed.[1]]

(h) Notwithstanding any other provision of this Act, the amount payable to any State under this part for quarters in a fiscal year shall with respect to quarters beginning after December 31, 1976, be reduced by 5 per centum of such amount if such State is found by the Secretary as the result of the annual audit to have failed to have an effective program meeting the requirements of section 402(a)(27) in any fiscal year beginning after September 30, 1976 (but, in the case of the fiscal year beginning October 1, 1976, only considering the second, third, and fourth quarters thereof).[2]

(i)(1)(A) Notwithstanding subsection (a)(1), if the ratio of a State's erroneous excess payments (as defined in subparagraph (C)) to its total payments under the State plan approved under this part exceeds—

(i) 0.04 for fiscal year 1983, or

(ii) 0.03 for any fiscal year thereafter,

then the Secretary shall make no payment for such fiscal year with respect to so much of the erroneous excess payments (as so defined) as exceeds the allowable error rate for such fiscal year.

(B) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a fiscal year despite a good faith effort by such State.

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[1] P.L. 97-35, §2181(a)(1), repealed subsection (g). P.L. 97-35, §2181(b), made that repeal applicable with respect to reductions for calendar quarters beginning on or after June 30, 1974.

P.L. 97-248, §137(a)(4), amended P.L. 97-35, §2181(b), by adding the following exception, effective as if it had been included originally in P.L. 97-35, §2181(b):

"except that, in the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order to incorporate the provisions required to be included by this section into such State plan, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act, but the requirements previously set forth in paragraphs (1) through (3) of section 403(g) of the Social Security Act (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan".

[2] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §309, with respect to postponement of imposition of certain penalties relating to child support requirements.

(C) For purposes of this subsection, the term "erroneous excess payments" means the total of (i) payments to ineligible families, and (ii) overpayments to eligible families.

(2) The State agency administering the plan approved under this part shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State's error rate for a fiscal year, the amount that would otherwise be payable to such State under this part for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, or the Virgin Islands.[1]

(j) In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such[2] State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

(1) at least 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be determined without regard to the provisions of this subsection; or

(2) less than 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be the amount determined without regard to this subsection, plus, of the amount by which such expenditures are less than they would have been if the erroneous excess payments of aid had been at a rate of 4 per centum—

(A) 10 per centum of the Federal share of such amount, in case such rate is not less than 3.5 per centum,

(B) 20 per centum of the Federal share of such amount, in case such rate is at least 3.0 per centum but less than 3.5 per centum,

(C) 30 per centum of the Federal share of such amount, in case such rate is at least 2.5 per centum but less than 3.0 per centum,

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[1]P.L. 97-248, §156(a), amended subsection (i) in its entirety, effective October 1, 1982.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §156(e), with respect to applicability of regulations relating to erroneous payments made by a State.

[2]P.L. 97-248, §156(c), struck out "If the dollar error rate of aid furnished by a" and substituted "In the case of Puerto Rico, Guam, or the Virgin Islands, if the dollar error rate of aid furnished by such". The inapplicability of section 403(j) of this Act to States other than Puerto Rico, Guam, and the Virgin Islands by reason of this amendment shall be effective with respect to six-month periods beginning after April 1983.

(D) 40 per centum of the Federal share of such amount, in case such rate is at least 2.0 per centum but less than 2.5 per centum,

(E) 50 per centum of the Federal share of such amount, in case such rate is less than 2.0 per centum.

For purposes of this subsection (i) the term "dollar error rate of aid" means the total of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payments,"[1] means the total of (I) erroneous payments to ineligible families receiving assistance, and (II) overpayments to eligible families receiving assistance.

OPERATION OF STATE PLANS

SEC. 404. [42 U.S.C. 604] (a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence requirement prohibited by section 402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 402(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

(b) No payment to which a State is otherwise entitled under this part for any period before September 1, 1962, shall be withheld by reason of any action taken pursuant to a State statute which requires that aid be denied under the State plan approved under this part with respect to a child because of the conditions in the home in which the child resides; nor shall any such payment be withheld for any period beginning on or after such date by reason of any action taken pursuant to such a statute if provision is otherwise made pursuant to a State statute for adequate care and assistance with respect to such child.

(c) No State shall be found, prior to January 1, 1977, to have failed substantially to comply with the requirements of section 402(a)(27) if, in the judgment of the Secretary, such State is making a good faith effort to implement the program required by such section.

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[1] As in original. Comma should be stricken.

(d) After December 31, 1976, in the case of any State which is found to have failed substantially to comply with the requirements of section 402(a)(27), the reduction in any amount payable to such State required to be imposed under section 403(h) shall be imposed in lieu of any reduction, with respect to such failure, which would otherwise be required to be imposed under this section.

USE OF PAYMENTS FOR BENEFIT OF CHILD

SEC. 405. [42 U.S.C. 605] Whenever the State agency has reason to believe that any payments of aid to families with dependent children made with respect to a child are not being or may not be used in the best interests of the child, the State agency may provide for such counseling and guidance services with respect to the use of such payments and the management of other funds by the relative receiving such payments as it deems advisable in order to assure use of such payments in the best interests of such child, and may provide for advising such relative that continued failure to so use such payments will result in substitution therefor of protective payments as provided under section 406(b)(2), or in seeking appointment of a guardian or legal representative as provided in section 1111, or in the imposition of criminal or civil penalties authorized under State law if it is determined by a court of competent jurisdiction that such relative is not using or has not used for the benefit of the child any such payments made for that purpose; and the provision of such services or advice by the State agency (or the taking of the action specified in such advice) shall not serve as a basis for withholding funds from such State under section 404 and shall not prevent such payments with respect to such child from being considered aid to families with dependent children.

DEFINITIONS

SEC. 406. [42 U.S.C. 606] When used in this part—

(a) The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States)[2], or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home, and (2) who is (A) under the age of eighteen, or (B) at the option of the State, under the age of nineteen and a full-time student in a secondary school (or in the equivalent level of vocational or technical training), if, before he attains age nineteen, he may reasonably be expected to complete the program of such secondary school (or such training);[3]

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[1]See P.L. 95-608, "Indian Child Welfare Act of 1978", §§2-113, with respect to Indian child welfare.

[2]P.L. 97-248, §153(a), inserted "(other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States)", effective October 1, 1982.

[3]P.L. 97-35, §2311, amended paragraph (2) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

(b) The term "aid to families with dependent children" means money payments with respect to[1] a dependent child or dependent children, or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children[2], and includes (1) money payments[3] to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parent and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 407), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 402(a)(7)) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 402 includes provision for—

(A) determination by the State agency that the relative of the child with respect to whom such payments are made has such inability to manage funds that making payments to him would be contrary to the welfare of the child and, therefore, it is necessary to provide such aid with respect to such child and relative through payments described in this clause (2);

(B) undertaking and continuing special efforts to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family;

(C) periodic review by such State agency of the determination under clause (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that the need for such payments is continuing, or is likely to continue, beyond a period specified by the Secretary;

(D) aid in the form of foster home care in behalf of children described in section 408(a)[4]; and

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[1]P.L. 97-35, §2184(b)(2)(A), struck out ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of,", effective August 13, 1981.

[2]P.L. 97-35, §2312(a), inserted ", or, at the option of the State, a pregnant woman but only if it has been medically verified that the child is expected to be born in the month such payments are made or within the three-month period following such month of payment, and who, if such child had been born and was living with her in the month of payment, would be eligible for aid to families with dependent children". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3]P.L. 97-35, §2184(b)(2)(A), struck out "or medical care or any type of remedial care recognized under State law", effective August 13, 1981.

[4]As in original. P.L. 96-272, §101(a)(2)(A), repealed §408.

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2).[1] Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision. Payments of the type described in clause (2) shall not be subject to the requirements of clauses (A) through (E) of such clause (2), when they are made in the manner described in clause (2) at the request of the family member to whom payment would otherwise be made in an unrestricted manner.[2]

(c) The term "relative with whom any dependent child is living" means the individual who is one of the relatives specified in subsection (a) and with whom such child is living (within the meaning of such subsection) in a place of residence maintained by such individual (himself or together with any one or more of the other relatives so specified) as his (or their) own home.

[(d) Repealed.[3]]

(e)(1) The term "emergency assistance to needy families with children" means any of the following, furnished for a period not in excess of 30 days in any 12-month period, in the case of a needy child under the age of 21 who is (or, within such period as may be specified by the Secretary, has been) living with any of the relatives specified in subsection (a)(1) in a place of residence maintained by one or more of such relatives as his or their own home, but only where such child is without available resources, the payments, care, or services involved are necessary to avoid destitution of such child or to provide living arrangements in a home for such child, and such destitution or need for living arrangements did not arise because such child or relative refused without good cause to accept employment or training for employment—

(A) money payments, payments in kind, or such other payments as the State agency may specify with respect to, or medical care or any other type of remedial care recognized under

[1] See P.L. 95-171, [Social Security—Extension], §3(b), with respect to the provision of goods or services by check drawn to the order of the recipient and the person supplying goods or services.

[2] P.L. 97-35, §2317(b), added the preceding sentence. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3] P.L. 97-35, §2353(b)(1), effective October 1, 1981, repealed subsection (d) as in effect with respect to the fifty States, the District of Columbia, Guam, Puerto Rico and the Virgin Islands before October 1975 and with respect to Guam, Puerto Rico, and the Virgin Islands from October 1975 to October 1981.

State law (for which such individual is not entitled to medical assistance under the State plan under title XIX)[1] on behalf of, such child or any other member of the household in which he is living, and

(B) such services as may be specified by the Secretary;

but only with respect to a State whose State plan approved under section 402 includes provision for such assistance.

(2) Emergency assistance as authorized under paragraph (1) may be provided under the conditions specified in such paragraph to migrant workers with families in the State or in such part or parts thereof as the State shall designate.

(f) Notwithstanding the provisions of subsection (b), the term "aid to families with dependent children" does not mean payments with respect to a parent (or other individual whose needs such State determines should be considered in determining the need of the child or relative claiming aid under the plan of such State approved under this part) of a child who fails to cooperate with any agency or official of the State in obtaining such support payments for such child. Nothing in this subsection shall be construed to make an otherwise eligible child ineligible for protective payments because of the failure of such parent (or such other individual) to so cooperate.

(g)(1) Notwithstanding the provisions of subsection (b), the term "aid to families with dependent children" does not mean any—

(A) amount paid to meet the needs of an unborn child; or

(B) amount paid (or by which a payment is increased) to meet the needs of a woman occasioned by or resulting from her pregnancy, unless, as has been medically verified, the woman's child is expected to be born in the month such payments are made (or increased) or within the three-month period following such month of payment.

(2) Notwithstanding paragraph (1), a State may provide that for purposes of title XIX a pregnant woman shall be deemed to be a recipient of aid to families with dependent children under this part if she would be eligible for such aid if such child had been born and was living with her in the month of payment, and such pregnancy has been medically verified.[2]

DEPENDENT CHILDREN OF UNEMPLOYED PARENTS[3]

SEC. 407. [42 U.S.C. 607] (a) The term "dependent child" shall, notwithstanding section 406(a), include a needy child who meets the requirements of section 406(a)(2), who has been deprived of parental support or care by reason of the unemployment (as determined in accordance with standards prescribed by the Secretary) of the parent who is the principal earner[4], and who is living with any of the relatives specified in section 406(a)(1) in a place of residence maintained by one or more of such relatives as his (or their) own home.

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[1] P.L. 97-35, §2184(b)(2)(B), added "(for which such individual is not entitled to medical assistance under the State plan under title XIX)", effective August 13, 1981.

[2] P.L. 97-35, §2312(b), added subsection (g). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3] P.L. 97-35, §2313(a)(1), struck out "FATHERS" and substituted "PARENTS". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[4] P.L. 97-35, §2313(a)(2), struck out "his father" and substituted "the parent who is the principal earner". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

(b) The provisions of subsection (a) shall be applicable to a State if the State's plan approved under section 402—

(1) requires the payment of aid to families with dependent children with respect to a dependent child as defined in subsection (a) when—

(A) whichever of such child's parents is the principal earner[1] has not been employed (as determined in accordance with standards prescribed by the Secretary) for at least 30 days prior to the receipt of such aid,

(B) such parent[2] has not without good cause, within such period (of not less than 30 days) as may be prescribed by the Secretary, refused a bona fide offer of employment or training for employment, and

(C)(i) such father[3] has 6 or more quarters of work (as defined in subsection (d)(1)) in any 13-calendar-quarter period ending within one year prior to the application for such aid or (ii) he received unemployment compensation under an unemployment compensation law of a State or of the United States, or he was qualified (within the meaning of subsection (d)(3)) for unemployment compensation under the unemployment compensation law of the State, within one year prior to the application for such aid; and

(2) provides—

(A) for such assurances as will satisfy the Secretary that unemployed parents[4] of dependent children as defined in subsection (a) will be certified to the Secretary of Labor as provided in section 402(a)(19) within thirty days after receipt of aid with respect to such children;

(B) for entering into cooperative arrangements with the State agency responsible for administering or supervising the administration of vocational education in the State, designed to assure maximum utilization of available public vocational education services and facilities in the State in order to encourage the retraining of individuals capable of being retrained;

(C) for the denial of aid to families with dependent children to any child or relative specified in subsection (a)—

(i) if and for so long as such child's parent described in paragraph (1)(A)[5], unless exempt under section 402(a)(19)(A), is not currently[6] registered pursuant to such section for the work incentive program established under part C of this title, or, if he is exempt under such section by reason of clause (iii) thereof or no such program in which he can effectively participate has

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[1]P.L. 97-35, §2313(a)(3)(A), struck out "such child's father" and substituted "whichever of such child's parents is the principal earner". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2]P.L. 97-35, §2313(a)(3)(B), struck out "father" and substituted "parent". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3]As in original. Should be "parent".

[4]P.L. 97-35, §2313(a)(4)(A), struck out "fathers" and substituted "unemployed parents". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5]P.L. 97-35, §2313(a)(4)(B), struck out "father" and substituted "parent described in paragraph (1)(A)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[6]P.L. 97-35, §2313(c)(2), inserted "currently". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

been established or provided under section 432(a), is not registered with the public employment offices in the State, and

(ii) with respect to any week for which such child's parent described in paragraph (1)(A)[1] qualifies for unemployment compensation under an unemployment compensation law of a State or of the United States, but refuses to apply for or accept such unemployment compensation; and

(D) for the reduction of the aid to families with dependent children otherwise payable to any child or relative specified in subsection (a) by the amount of any unemployment compensation that such child's parent described in paragraph (1)(A)[2] receives under an unemployment compensation law of a State or of the United States.

(c) Notwithstanding any other provisions of this section, expenditures pursuant to this section shall be excluded from aid to families with dependent children (A) where such expenditures are made under the plan with respect to any dependent child as defined in subsection (a), (i) for any part of the 30-day period referred to in subparagraph (A) of subsection (b)(1), or (ii) for any period prior to the time when the parent[3] satisfies subparagraph (B) of such subsection, and (B) if, and for as long as, no action is taken (after the 30-day period referred to in subparagraph (A) of subsection (b)(2)), under the program therein specified, to certify such parent[4] to the Secretary of Labor pursuant to section 402(a)(19).

(d) For purposes of this section—

(1) the term "quarter of work" with respect to any individual means a calendar quarter in which such individual received earned income of not less than $50 (or which is a "quarter of coverage" as defined in section 213(a)(2)), or in which such individual participated in a community work experience program under[5] section 409, or the work incentive program established under part C;

(2) the term "calendar quarter" means a period of 3 consecutive calendar months ending on March 31, June 30, September 30, or December 31;

(3) an individual shall, for purposes of section 407(b)(1)(C), be deemed qualified for unemployment compensation under the State's unemployment compensation law if—

(A) he would have been eligible to receive such unemployment compensation upon filing application, or

(B) he performed work not covered under such law and such work, if it had been covered, would (together with any

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[1] P.L. 97-35, §2313(a)(4)(B), struck out "father" and substituted "parent described in paragraph (1)(A)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2] P.L. 97-35, §2313(a)(4)(B), struck out "father" and substituted "parent described in paragraph (1)(A)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3] P.L. 97-35, §2313(a)(5), struck out "father" and substituted "parent". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[4] P.L. 97-35, §2313(a)(5), struck out "father" and substituted "parent". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[5] P.L. 97-35, §2353(q), struck out "and training program under section 409 or any other work and training program subject to the limitations in" and substituted "experience program under", effective October 1, 1981.

covered work he performed) have made him eligible to receive such unemployment compensation upon filing application; and

(4) the phrase "whichever of such child's parents is the principal earner", in the case of any child, means whichever parent, in a home in which both parents of such child are living, earned the greater amount of income in the 24-month period the last month of which immediately precedes the month in which an application is filed for aid under this part on the basis of the unemployment of a parent, for each consecutive month for which the family receives such aid on that basis.[1]

(e) The Secretary of Health, Education, and Welfare and the Secretary of Labor shall jointly enter into an agreement with each State which is able and willing to do so for the purpose of (1) simplifying the procedures to be followed by unemployed parents[2] and other unemployed persons in such State in registering pursuant to section 402(a)(19) for the work incentive program established by part C of this title and in registering with public employment offices (under this section and otherwise) or in connection with applications for unemployment compensation, by reducing the number of locations or agencies where such persons must go in order to register for such programs and in connection with such applications, and (2) providing where possible for a single registration satisfying this section and the requirements of both the work incentive program and the applicable unemployment compensation laws.

[SEC. 408. Repealed.[3]]

COMMUNITY WORK EXPERIENCE PROGRAMS[4]

SEC. 409. [42 U.S.C. 609] (a)(1) Any State which chooses to do so may establish a community work experience program in accordance with this section. The purpose of the community work experience program is to provide experience and training for individuals not otherwise able to obtain employment, in order to assist them to move into regular employment. Community work experience programs shall be designed to improve the employability of participants through actual work experience and training and to enable individuals employed under community work experience programs to move promptly into regular public or private employment. The facilities of the State public employment offices may be utilized to find employment opportunities for recipients under this program. Community work experience programs shall be limited to projects which serve a useful public purpose in fields such as health, social service, environmental protection, education, urban and rural development and redevelopment, welfare, recreation, public facilities, public safety, and day care. To the extent possible, the prior training, experience, and skills of a recipient shall be utilized in making appropriate work experience assignments. A community work experience program established under this section shall provide—

[1] P.L. 97-35, §2313(a)(6)(C), added paragraph (4). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[2] P.L. 97-35, §2313(a)(7), struck out "fathers" and substituted "parents". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

[3] P.L. 96-272, §101(a)(2)(A); 94 Stat. 512.

[4] P.L. 97-35, §2307(a), amended §409 in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

(A) appropriate standards for health, safety, and other conditions applicable to the performance of work;

(B) that the program does not result in displacement of persons currently employed, or the filling of established unfilled position vacanies[1];

(C) reasonable conditions of work, taking into account the geographic region, the residence of the participants, and the proficiency of the participants;

(D) that participants will not be required, without their consent, to travel an unreasonable distance from their homes or remain away from their homes overnight;

(E) that the maximum number of hours in any month that a participant may be required to work is that number which equals the amount of aid payable with respect to the family of which such individual is a member under the State plan approved under this part, divided by the greater of the Federal or the applicable State minimum wage; and

(F) that provision will be made for transportation and other costs, not in excess of an amount established by the Secretary, reasonably necessary and directly related to participation in the program.

(2) Nothing contained in this section shall be construed as authorizing the payment of aid under this part as compensation for work performed, nor shall a participant be entitled to a salary or to any other work or training expense provided under any other provision of law by reason of his participation in a program under this section.

(3) Nothing in this part or part C, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate, whether or not such terms, conditions, and cases are consistent with section 402(a)(19) or part (C)[2]) a community work experience program in accordance with this section.

(b)(1) Each recipient of aid under the plan who is registered under section 402(a)(19) shall participate, upon referral by the State agency, in a community work experience program unless such recipient is currently employed for no fewer than 80 hours a month and is earning an amount not less than the applicable minimum wage for such employment.

(2) In addition to an individual described in paragraph (1), the State agency may also refer, for participation in programs under this section, an individual who would be required to register under section 402(a)(19)(A) but for the exception contained in clause (v) of such section (but only if the child for whom the parent or relative is caring is not under the age of three and child care is available for such child), or in clause (iii) of such section.

(3) The chief executive officer of the State shall provide coordination between a community work experience program operated pursuant to this section, any program of employment search under section 402(a)(35),[3] and the work incentive program operated pursuant to

[1] As in original. Should be "vacancies".
[2] As in original. Should be "C".
[3] P.L. 97-248, §154(c)(1)(A), inserted ", any program of employment search under section 402(a)(35),", effective October 1, 1982.

part C so as to insure that job placement will have priority over participation in the community work experience program, and that individuals eligible to participate in more than one such program[1] are not denied aid under the State plan on the grounds of failure to participate in one such program if they are actively and satisfactorily participating in another[2]. The chief executive officer of the State may provide that part-time participation in more than one such program[3] may be required where appropriate.

(c) The provisions of section 402(a)(19)(F) shall apply to any individual referred to a community work experience program who fails to participate in such program in the same manner as they apply to an individual to whom section 402(a)(19) applies.

(d) In the case of any State which makes expenditures in the form described in subsection (a) under its State plan approved under section 402, expenditures for the proper and efficient administration of the State plan, for purposes of section 403(a)(3), may not include the cost of making or acquiring materials or equipment in connection with the work performed under a program referred to in subsection (a) or the cost of supervision of work under such program, and may include only such other costs attributable to such programs as are permitted by the Secretary.

FOOD STAMP DISTRIBUTION[4]

SEC. 410. [42 U.S.C. 610] (a) Any State plan for aid and services to needy families with children may (but is not required under this title or any other provision of Federal law to) provide for the institution of procedures, in any or all areas of the State, by the State agency administering or supervising the administration of such plan under which any household participating in the food stamp program established by the Food Stamp Act of 1964[5], as amended, will be entitled, if it so elects, to have the charges, if any, for its coupon allotment under such program deducted from any aid, in the form of money payments, which is (or, except for the deduction of such charge, would be) payable to or with respect to such household (or any member or members thereof) under such plan and have its coupon allotment distributed to it with such aid.

(b) Any deduction made pursuant to an option provided in accordance with subsection (a) shall not be considered to be a payment described in section 406(b)(2).

(c) Notwithstanding any other provision of law, no agency which is designated as a State agency for any State under or pursuant to the Food Stamp Act of 1964[6], as amended, shall be regarded as having failed to comply with any requirement imposed by or pursuant to such Act solely because of the failure, of the State agency administering or supervising the administration of the State plan (approved

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[1] P.L. 97-248, §154(c)(1)(B), struck out "both such programs" and substituted "more than one such program", effective October 1, 1982.

[2] P.L. 97-248, §154(c)(1)(C), struck out "the other" and substituted "another", effective October 1, 1982.

[3] P.L. 97-248, §154(c)(2), struck out "both such programs" and substituted "more than one such program", effective October 1, 1982.

[4] See P.L. 88-525, "Food Stamp Act of 1977", §11(i) with respect to acceptance of applications for participation in the food stamp program and §16(e) with respect to use of the social security number for participation in the food stamp program.

[5] P.L. 88-525.

[6] P.L. 88-525.

under this part) of such State, to institute or carry out a procedure, described in subsection (a).

ACCESS TO WAGE INFORMATION

SEC. 411. [42 U.S.C. 611] (a) Notwithstanding any other provision of law, the Secretary shall make available to States and political subdivisions thereof wage information contained in the records of the Social Security Administration which is necessary (as determined by the Secretary in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under this part, and which is specifically requested by such State or political subdivision for such purposes.

(b) The Secretary shall establish such safeguards as are necessary (as determined by the Secretary under regulations) to insure that information made available under the provisions of this section is used only for the purposes authorized by this section.

PRORATING SHELTER ALLOWANCE OF AFDC FAMILY LIVING WITH ANOTHER HOUSEHOLD[1]

SEC. 412. [42 U.S.C. 612] A State plan for aid and services to needy families with children may provide that, in determining the need of any dependent child or relative claiming aid who is living with other individuals (not claiming aid together with such child or relative) as a household (as defined, for purposes of this section, by the Secretary), the amount included in the standard of need, and the payment standard, applied to such child or relative for shelter, utilities, and similar needs may be prorated on a reasonable basis, in such manner and under such circumstances as the State may determine to be appropriate. For purposes of any method of proration used by a State under this section, there shall not be included as a member of a household an individual receiving benefits under title XVI in any month to whom the one-third reduction prescribed by section 1612(a)(2)(A)(i) is applied.

TECHNICAL ASSISTANCE FOR DEVELOPING MANAGEMENT INFORMATION SYSTEMS[2]

SEC. 413. [42 U.S.C. 613] The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 403(a)(3)(B) of this Act.

WORK SUPPLEMENTATION PROGRAM[3]

SEC. 414. [42 U.S.C. 614] (a) It is the purpose of this section to allow a State to institute a work supplementation program under which such State, to the extent such State determines to be appropri-

[1] P.L. 97-35, §2306(b), amended subsection (b). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.
P.L. 97-248, §155(a), amended §412 in its entirety, effective October 1, 1982.

[2] P.L. 96-265, §406(c), added §413, effective with respect to expenditures made during calendar quarters beginning on or after July 1, 1981.

[3] P.L. 97-35, §2308, added §414. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

ate, may make jobs available, on a voluntary basis, as an alternative to aid otherwise provided under the State plan approved under this part.

(b)(1) Notwithstanding the provisions of section 406 or any other provision of law, Federal funds may be paid to a State under this part, subject to the provisions of this section, with respect to expenditures incurred in operating a work supplementation program under this section.

(2) Nothing in this part or part C, or in any State plan approved under this part, shall be construed to prevent a State from operating (on such terms and conditions and in such cases as the State may find to be necessary or appropriate, whether or not such terms, conditions, and cases are consistent with section 402(a)(19) or part C) a work supplementation program in accordance with this section.

(3) Notwithstanding section 402(a)(23) or any other provision of law, a State may adjust the levels of the standards of need under the State plan as the State determines to be necessary and appropriate for carrying out a work supplementation program under this section.

(4) Notwithstanding section 402(a)(1) or any other provision of law, a State operating a work supplementation program under this section may provide that the needs standards in effect in those areas of the State in which such program is in operation may be different from the needs standards in effect in the areas in which such program is not in operation, and such State may provide that the needs standards for categories of recipients of aid may vary among such categories as the State determines to be appropriate on the basis of ability to participate in the work supplementation program.

(5) Notwithstanding any other provision of law, a State may make further adjustments in the amounts of aid paid under the plan to different categories of receipients[1] (as determined under paragraph (4)) in order to offset increases in benefits from needs related programs (other than the State plan approved under this part) as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(6) Notwithstanding section 402(a)(8) or any other provision of law, a State operating a work supplementation program under this section may reduce or eliminate the amount of earned income to be disregarded under the State plan as the State determines to be necessary and appropriate to further the purposes of the work supplementation program.

(c)(1) A work supplementation program operated by a State under this section shall provide that any individual who is an eligible individual (as determined under paragraph (2)) may choose to take a supplemented job (as defined in paragraph (3)) to the extent supplemented jobs are available under the program. Payments by the State to individuals or to employers under the program shall be expenditures incurred by the State for aid to families with dependent children, except as limited by subsection (d).

(2) For purposes of this section, an eligible individual is an individual who is in a category which the State determines shall be eligible to participate in the work supplementation program, and who would, at the time of his placement in such job, be eligible for

[1] As in original.

assistance under the State plan if such State did not have a work supplementation program in effect and had not altered its State plan accordingly, as such State plan was in effect in May 1981, or as modified thereafter as required by Federal law.

(3) For purposes of this section, a supplemented job is—

(A) a job position provided to an eligible individual by the State or local agency administering the State plan under this part;

(B) a job position provided to an eligible individual by a public or nonprofit entity for which all or part of the wages are paid by such State or local agency; or

(C) a job position provided to an eligible individual by a proprietary entity involving the provision of child day care services for which all or part of the wages are paid by such State or local agency, but only if such entity does not claim a credit for any part of the wages paid to such eligible individual under section 40 of the Internal Revenue Code of 1954[1] (relating to credit for expenses of the work incentive program) or section 44B of such Code[2] (relating to credit for employment of certain new employees).

A State may provide or subsidize any job position under the program as such State determines to be appropriate, but acceptance of any such position shall be voluntary.

(d) The amount of the Federal payment to a State under section 403 for any quarter for expenditures incurred in operating a work supplementation program shall not exceed an amount equal to the difference between—

(1) the amount which would have been paid under section 403 to such State for such quarter under the State plan if it did not have a work supplementation program in effect and had not altered its State plan accordingly, as such State plan was in effect in May 1981, or as modified thereafter as required by Federal law; and

(2) the amount paid to such State under section 403 for such quarter exclusive of the amount so paid for such quarter for the work supplementation program.

(e)(1) Nothing in this section shall be construed as requiring a State or local agency administering the State plan to provide employee status to any eligible individual to whom it provides a job position under the work supplementation program, or with respect to whom it provides all or part of the wages paid to such individual by another entity under such program.

(2) Nothing in this section shall be construed as requiring such State or local agency to provide that eligible individuals filling job positions provided by other entities under such program be provided employee status by such entity during the first 13 weeks during which they fill such position.

(3) Wages paid under a work supplementation program shall be considered to be earned income for purposes of any provision of law.

(f) Any work supplementation program operated by a State shall be administered by—

(1) the agency designated to administer or supervise the administration of the State plan under section 402(a)(3); or

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[1] P.L. 83-591.
[2] P.L. 83-591.

(2) the agency (if any) designated to administer the community work experience program under section 409.

(g) Any State which chooses to operate a work supplementation program under this section may choose to provide that any individual who participates in such program, and any child or relative of such individual (or other individual living in the same household as such individual) who would be eligible for aid under the State plan approved under this part if such State did not have a work supplementation program, shall be considered individuals receiving aid under the State plan approved under this part for purposes of eligibility for medical assistance under the State plan approved under title XIX.

(h) No individual receiving a grant under the State plan shall be excused, by reason of the fact that such State has a work supplementation program, from any requirement of this part or part C relating to work requirements.

ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIEN[1]

SEC. 415. [42 U.S.C. 615] (a) For purposes of determining eligibility for and the amount of benefits under a State plan approved under this part for an individual who is an alien described in clause (B) of section 402(a)(33), the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the unearned income and resources of such individual (in accordance with subsections (b) and (c)) for a period of three years after the individual's entry into the United States, except that this section is not applicable if such individual is a dependent child and such sponsor (or such sponsor's spouse) is the parent of such child.

(b)(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any month shall be determined as follows:

(A) the total amount of earned and unearned income of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such month;

(B) the amount determined under subparagraph (A) shall be reduced by an amount equal to the sum of—

(i) the lesser of (I) 20 percent of the total of any amounts received by the sponsor and his spouse in such month as wages or salary or as net earnings from self-employment, plus the full amount of any costs incurred by them in producing self-employment income in such month, or (II) $175;

(ii) the cash needs standard established by the State under its plan for a family of the same size and composition as the sponsor and those other individuals living in the same household as the sponsor who are claimed by him as dependents for purposes of determinig[2] his Federal personal

[1] P.L. 97-35, §2320(b)(2), added §415, effective with respect to individuals applying for aid to families with dependent children under any approved State plan for the first time after September 30, 1981.

[2] As in original. Should be "determining".

income tax liability but whose needs are not taken into account in making a determination under section 402(a)(7);

(iii) any amounts paid by the sponsor (or his spouse) to individuals not living in such household who are claimed by him as dependents for purposes of determining his Federal personal income tax liability; and

(iv) any payments of alimony or child support with respect to individuals not living in such household.

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any month shall be determined as follows:

(A) the total amount of the resources (determined as if the sponsor were applying for aid under the State plan approved under this part) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined; and

(B) the amount determined under subparagraph (A) shall be reduced by $1,500.

(c)(1) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be eligible for aid under a State plan approved under this part, be required to provide to the State agency administering such plan such information and documentation with respect to his sponsor as may be necessary in order for the State agency to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for any such determination. Such alien shall also be required to provide to the State agency such information and documentation as it may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to them and required in order to make any determination under this section will be provided by them to the Secretary (who may, in turn, make such information available, upon request, to a concerned State agency), and whereby the Secretary of State and Attorney General will inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(d) Any sponsor of an alien, and such alien, shall be jointly and severally liable for an amount equal to any overpayment of aid under the State plan made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause of such failure existed. Any such overpayment which is not repaid to the State or recovered in accordance with the procedures generally applicable under the State plan to the recoupment of overpayments shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this Act.

(e)(1) In any case where a person is the sponsor of two or more alien individuals who are living in the same home, the income and resources of such sponsor (and his spouse), to the extent they would be deemed the income and resources of any one of such individuals under the preceding provisions of this section, shall be divided into

two or more equal shares (the number of shares being the same as the number of such alien individuals) and the income and resources of each such individual shall be deemed to include one such share.

(2) Income and resources of a sponsor (and his spouse) which are deemed under this section to be the income and resources of any alien individual in a family shall not be considered in determining the need of other family members except to the extent such income or resources are actually available to such other members.

(f) The provisions of this section shall not apply with respect to any alien who is—

(1) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act[1] ;

(2) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c) of such Act;

(3) paroled into the United States as a refugee under section 212(d)(5) of such Act;

(4) granted political asylum by the Attorney General under section 208 of such Act; or

(5) a Cuban and Haitian entrant, as defined in section 501(e) of the Refugee Education Assistance Act of 1980 (Public Law 96-422).

PART B—CHILD WELFARE SERVICES[2]

APPROPRIATION

SEC. 420. [42 U.S.C. 620] (a) For the purpose of enabling the United States, through the Secretary, to cooperate with State public welfare agencies in establishing, extending, and strengthening child welfare services, there is authorized to be appropriated for each fiscal year the sum of $266,000,000.

(b) Funds appropriated for any fiscal year pursuant to the authorization contained in subsection (a) shall be included in the appropriation Act (or supplemental appropriation Act) for the fiscal year preceding the fiscal year for which such funds are available for obligation. In order to effect a transition to this method of timing appropriation action, the preceding sentence,[3] shall apply notwithstanding the fact that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

ALLOTMENTS TO STATES

SEC. 421. [42 U.S.C. 621] (a) The sum appropriated pursuant to section 420 for each fiscal year shall be allotted by the Secretary for use by cooperating State public welfare agencies which have plans developed jointly by the State agency and the Secretary as follows:

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[1] P.L. 82-414.

[2] See P.L. 95-608, "Indian Child Welfare Act of 1978", §201(b), with respect to Indian child welfare.

See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §103(f)(1), with respect to availability of fiscal year 1980 appropriation funds.

[3] As in original. Comma should be stricken.

He shall first allot $70,000 to each State, and shall then allot to each State an amount which bears the same ratio to the remainder of such sum as the product of (1) the population of the State under the age of twenty-one and (2) the allotment percentage of the State (as determined under this section) bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be the percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that (1) the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and (2) the allotment percentage shall be 70 per centum in the case of Puerto Rico, the Virgin Islands, and Guam.

(c) The allotment percentage for each State shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the two fiscal years in the period beginning October 1 next succeeding such promulgation.

(d) For purposes of this section, the term "United States" means the fifty States and the District of Columbia.

STATE PLANS FOR CHILD WELFARE SERVICES[1]

SEC. 422. [42 U.S.C. 622] (a) In order to be eligible for payment under this part, a State must have a plan for child welfare services which has been developed jointly by the Secretary and the State agency designated pursuant to subsection (b)(1), and which meets the requirements of subsection (b).

(b) Each plan for child welfare services under this part shall—

(1) provide that (A) the individual or agency designated pursuant to section 2003(d)(1)(C) to administer or supervise the administration of the State's services program will administer or supervise the administration of the plan (except as otherwise provided in section 103(d) of the Adoption Assistance and Child Welfare Act of 1980[2]), and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering the plan, a single organizational unit in such State or local agency, as the case may be, will be responsible for furnishing such child welfare services;

(2) provide for coordination between the services provided for children under the plan and the services and assistance provided under title XX, under the State plan approved under part A of

[1] P.L. 96-272, §103(a), amended §422 in its entirety effective June 17, 1980, except that in the case of Guam, Puerto Rico, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands, §422(b)(1) shall be deemed to read as follows:

"(1) provide that (A) the State agency designated pursuant to section 402(a)(3) to administer or supervise the administration of the plan of the State approved under part A of this title will administer or supervise the administration of such plan for child welfare services, and (B) to the extent that child welfare services are furnished by the staff of the State agency or local agency administering such plan for child welfare services, the organizational unit in such State or local agency established pursuant to section 402(a)(15) will be responsible for furnishing such child welfare services;".

[2] P.L. 96-272.

this title, under the State plan approved under part E of this title, and under other State programs having a relationship to the program under this part, with a view to provision of welfare and related services which will best promote the welfare of such children and their families;

(3) provide that the standards and requirements imposed with respect to child day care under title XX shall apply with respect to day care services under this part, except insofar as eligibility for such services is involved;

(4) provide for the training and effective use of paid paraprofessional staff, with particular emphasis on the full-time or part-time employment of persons of low income, as community service aides, in the administration of the plan, and for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency;

(5) contain a description of the services to be provided and specify the geographic areas where such services will be available;

(6) contain a description of the steps which the State will take to provide child welfare services and to make progress in—

(A) covering additional political subdivisions,

(B) reaching additional children in need of services, and

(C) expanding and strengthening the range of existing services and developing new types of services,

along with a description of the State's child welfare services staff development and training plans;

(7) provide, in the development of services for children, for utilization of the facilities and experience of voluntary agencies in accordance with State and local programs and arrangements, as authorized by the State; and

(8) provide that the agency administering or supervising the administration of the plan will furnish such reports, containing such information, and participate in such evaluations, as the Secretary may require.

PAYMENT TO STATES

SEC. 423. [42 U.S.C. 623] (a) From the sums appropriated therefor and the allotment under this part, subject to the conditions set forth in this section and in section 427, the Secretary shall from time to time pay to each State that has a plan developed in accordance with section 422 an amount equal to 75 per centum of the total sum expended under the plan (including the cost of administration of the plan) in meeting the costs of State, district, county, or other local child welfare services.

(b) The method of computing and making payments under this section shall be as follows:

(1) The Secretary shall, prior to the beginning of each period for which a payment is to be made, estimate the amount to be paid to the State for such period under the provisions of this section.

(2) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this section)

by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such prior period under this section.

(c)(1) No payment may be made to a State under this part, for any fiscal year beginning after September 30, 1979, with respect to State expenditures made for (A) child day care necessary solely because of the employment, or training to prepare for employment, of a parent or other relative with whom the child involved is living, (B) foster care maintenance payments, and (C) adoption assistance payments, to the extent that the Federal payment with respect to those expenditures would exceed the total amount of the Federal payment under this part for fiscal year 1979.

(2) Expenditures made by a State for any fiscal year which begins after September 30, 1979, for foster care maintenance payments shall be treated for purposes of making Federal payments under this part with respect to expenditures for child welfare services, as if such foster care maintenance payments constituted child welfare services of a type to which the limitation imposed by paragraph (1) does not apply; except that the amount payable to the State with respect to expenditures made for other child welfare services and for foster care maintenance payments during any such year shall not exceed 100 per centum of the amount of the expenditures made for child welfare services for which payment may be made under the limitation imposed by paragraph (1) as in effect without regard to this paragraph.

(d) No payment may be made to a State under this part in excess of the payment made under this part for fiscal year 1979, for any fiscal year beginning after September 30, 1979, if for the latter fiscal year the total of the State's expenditures for child welfare services under this part (excluding expenditures for activities specified in subsection (c)(1)) is less than the total of the State's expenditures under this part (excluding expenditures for such activities) for fiscal year 1979.

REALLOTMENT

SEC. 424. [42 U.S.C. 624] The amount of any allotment to a State under section 421 for any fiscal year which the State certifies to the Secretary will not be required for carrying out the State plan developed as provided in section 422 shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines (1) have need in carrying out their State plans so developed for sums in excess of those previously allotted to them under section 421 and (2) will be able to use such excess amounts during such fiscal year. Such reallotments shall be made on the basis of the State plans so developed, after taking into consideration the population under the age of twenty-one, and the per capita income of each such State as compared with the population under the age of twenty-one, and the per capita income of all such States with respect to which such a determination by the Secretary has been made. Any amount so reallotted to a State shall be deemed part of its allotment under section 421.

DEFINITIONS

SEC. 425. [42 U.S.C. 625] (a)(1) For purposes of this title, the term "child welfare services" means public social services which are directed toward the accomplishment of the following purposes: (A) protecting and promoting the welfare of all children, including handicapped, homeless, dependent, or neglected children; (B) preventing or remedying, or assisting in the solution of problems which may result in, the neglect, abuse, exploitation, or delinquency of children; (C) preventing the unnecessary separation of children from their families by identifying family problems, assisting families in resolving their problems, and preventing breakup of the family where the prevention of child removal is desirable and possible; (D) restoring to their families children who have been removed, by the provision of services to the child and the families; (E) placing children in suitable adoptive homes, in cases where restoration to the biological family is not possible or appropriate; and (F) assuring adequate care of children away from their homes, in cases where the child cannot be returned home or cannot be placed for adoption.

(2) Funds expended by a State for any calendar quarter to comply with the statistical report required by section 476(b), and funds expended with respect to nonrecurring costs of adoption proceedings in the case of children placed for adoption with respect to whom assistance is provided under a State plan for adoption assistance approved under part E of this title, shall be deemed to have been expended for child welfare services.

(b) For other definitions relating to this part and to part E of this title, see section 475 of this Act.

RESEARCH, TRAINING, OR DEMONSTRATION PROJECTS

SEC. 426. [42 U.S.C. 626] (a) There are hereby authorized to be appropriated for each fiscal year such sums as the Congress may determine—

(1) for grants by the Secretary—

(A) to public or other nonprofit institutions of higher learning, and to public or other nonprofit agencies and organizations engaged in research or child-welfare activities, for special research or demonstration projects in the field of child welfare which are of regional or national significance and for special projects for the demonstration of new methods or facilities which show promise of substantial contribution to the advancement of child welfare;

(B) to State or local public agencies responsible for administering, or supervising the administration of, the plan under this part, for projects for the demonstration of the utilization of research (including findings resulting therefrom) in the field of child welfare in order to encourage experimental and special types of welfare services; and

(C) to public or other nonprofit institutions of higher learning for special projects for training personnel for work in the field of child welfare, including traineeships with such stipends and allowances as may be permitted by the Secretary; and

(2) for contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research, special projects, or demonstration projects relating to such matters.

(b) Payments of grants or under contracts or cooperative arrangements under this section may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine; and shall be made on such conditions as the Secretary finds necessary to carry out the purposes of the grants, contracts, or other arrangements.

FOSTER CARE PROTECTION REQUIRED FOR ADDITIONAL FEDERAL PAYMENTS

SEC. 427. [42 U.S.C. 627] (a) If, for any fiscal year after fiscal year 1979, there is appropriated under section 420 a sum in excess of $141,000,000, a State shall not be eligible for payment from its allotment in an amount greater than the amount for which it would be eligible if such appropriation were equal to $141,000,000, unless such State—

(1) has conducted an inventory of all children who have been in foster care under the responsibility of the State for a period of six months preceding the inventory, and determined the appropriateness of, and necessity for, the current foster placement, whether the child can be or should be returned to his parents or should be freed for adoption, and the services necessary to facilitate either the return of the child or the placement of the child for adoption or legal guardianship; and

(2) has implemented and is operating to the satisfaction of the Secretary—

(A) a statewide information system from which the status, demographic characteristics, location, and goals for the placement of every child in foster care or who has been in such care within the preceding twelve months can readily be determined;

(B) a case review system (as defined in section 475(5)) for each child receiving foster care under the supervision of the State; and

(C) a service program designed to help children, where appropriate, return to families from which they have been removed or be placed for adoption or legal guardianship.

(b) If, for each of any two consecutive fiscal years after the fiscal year 1979, there is appropriated under section 420 a sum equal to $266,000,000, each State's allotment amount for any fiscal year after such two consecutive fiscal years shall be reduced to an amount equal to its allotment amount for the fiscal year 1979, unless such State—

(1) has completed an inventory of the type specified in subsection (a)(1);

(2) has implemented and is operating the program and systems specified in subsection (a)(2); and

(3) has implemented a preplacement preventive service program designed to help children remain with their families.

(c) Any amounts expended by a State for the purpose of complying with the requirements of subsection (a) or (b) shall be conclusively presumed to have been expended for child welfare services.

PAYMENTS TO INDIAN TRIBAL ORGANIZATIONS

SEC. 428. [42 U.S.C. 628] (a) The Secretary may, in appropriate cases (as determined by the Secretary) make payments under this part directly to an Indian tribal organization within any State which has a plan for child welfare services approved under this part. Such payments shall be made in such manner and in such amounts as the Secretary determines to be appropriate.

(b) Amounts paid under subsection (a) shall be deemed to be a part of the allotment (as determined under section 421) for the State in which such Indian tribal organization is located.

(c) For purposes of this section—

(1) the term "tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body; and

(2) the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

PART C—WORK INCENTIVE PROGRAM FOR RECIPIENTS OF AID UNDER STATE PLAN APPROVED UNDER PART A

PURPOSE

SEC. 430. [42 U.S.C. 630] The purpose of this part is to require the establishment of a program utilizing all available manpower services, including those authorized under other provisions of law, under which individuals receiving aid to families with dependent children will be furnished incentives, opportunities, and necessary services in order for (1) the employment of such individuals in the regular economy, (2) the training of such individuals for work in the regular economy, and (3) the participation of such individuals in public service employment, thus restoring the families of such individuals to independence and useful roles in their communities. It is expected that the individuals participating in the program established under this part will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.

APPROPRIATION

SEC. 431. [42 U.S.C. 631] (a) There is hereby authorized to be appropriated to the Secretary of Health, Education, and Welfare for each fiscal year a sum sufficient to carry out the purposes of this part. The Secretary of Health, Education, and Welfare shall transfer to the Secretary of Labor from time to time sufficient amounts, out of the moneys appropriated pursuant to this section, to enable him to carry out such purposes.

(b) Of the amounts expended from funds appropriated pursuant to subsection (a) for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 33⅓ per centum thereof shall be expended for carrying out the program of on-the-job training referred to in section 432(b)(1)(B) and for carrying out the program of public service employment referred to in section 432(b)(3).

(c) Of the sums appropriated pursuant to subsection (a) to carry out the provisions of this part for any fiscal year (commencing with the fiscal year ending June 30, 1973), not less than 50 percent shall be allotted among the States in accordance with a formula under which each State receives (from the total available for such allotment) an amount which bears the same ratio to such total as—

(1) in the case of the fiscal year ending June 30, 1973, and the fiscal year ending June 30, 1974, the average number of recipients of aid to families with dependent children in such State during the month of January last preceding the commencement of such fiscal year bears to the average number of such recipients during such month in all the States; and

(2) in the case of the fiscal year ending June 30, 1975, or in the case of any fiscal year thereafter, the average number of individuals in such State who, during the month of January last preceding the commencement of such fiscal year, are registered pursuant to section 402(a)(19)(A) bears to the average number of individuals in all States who, during such month, are so registered.

ESTABLISHMENT OF PROGRAMS

SEC. 432. [42 U.S.C. 632] (a) The Secretary of Labor (hereinafter in this part referred to as the Secretary) shall, in accordance with the provisions of this part, establish work incentive programs (as provided for in subsection (b) of this section) in each State and in each political subdivision of a State in which he determines there is a significant number of individuals who have attained age 16 and are receiving aid to families with dependent children. In other political subdivisions, he shall use his best efforts to provide such programs either within such subdivisions or through the provision of transportation for such persons to political subdivisions of the State in which such programs are established.

(b) Such programs shall include, but shall not be limited to, (1)(A) a program placing as many individuals as is possible in employment, which may include intensive job search services, including participation in group job search activities[1], and (B) a program utilizing on-the-job training positions for others, (2) a program of institutional and work experience training for those individuals for whom such training is likely to lead to regular employment, and (3) a program of public service employment for individuals for whom a job in the regular economy cannot be found.

(c) In carrying out the purposes of this part the Secretary may make grants to, or enter into agreements with, public or private agencies or organizations (including Indian tribes with respect to

[1] P.L. 97-300, §502(c)(1), inserted ", which may include intensive job search services, including participation in group job search activities", effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendments.

Indians on a reservation), except that no such grant or agreement shall be made to or with a private employer for profit or with a private nonprofit employer not organized for a public purpose for purposes of the work experience program established by clause (2) of subsection (b).

(d) In providing the training and employment services and opportunities required by this part, the Secretary of Labor shall, to the maximum extent feasible, assure that such services and opportunities are provided by using all authority available under this or any other Act. In order to assure that the services and opportunities so required are provided, the Secretary of Labor (1) shall assure, when appropriate, that registrants under this part are referred for training and employment services under the Job Training Partnership Act[1], and (2) may use the funds appropriated under this part to provide programs required by this part through such other Acts to the same extent and under the same conditions (except as regards the Federal matching percentage) as if appropriated under such other Act and, in making use of the programs of other Federal, State, or local agencies (public or private), the Secretary of Labor may reimburse such agencies for services rendered to individuals under this part to the extent that such services and opportunities are not otherwise available on a nonreimbursable basis.[2]

(e) The Secretary shall take appropriate steps to assure that the present level of manpower services available under the authority of other statutes to recipients of aid to families with dependent children is not reduced as a result of programs under this part.

(f)(1) The Secretary of Labor shall utilize the services of each private industry council (as established under the Job Training Partnership Act[3]) to identify and provide advice on the types of jobs available or likely to become available in the service delivery area of such council.[4]

(2)[5] The Secretary shall not conduct, in any area, institutional training under any program established pursuant to subsection (b) of any type which is not related to jobs of the type which are or are likely to become available in such area as determined by the Secretary after taking into account information provided by the private industry council[6] for such area.

OPERATION OF PROGRAM

SEC. 433. [42 U.S.C. 633] (a) The Secretary shall provide a program of testing and counseling for all persons certified to him by a State, pursuant to section 402(a)(19)(G), and shall select those persons whom he finds suitable for the programs established by

[1]P.L. 97-300.

[2]P.L. 97-300, §502(a), amended subsection (d) in its entirety, effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

[3]P.L. 97-300.

[4]P.L. 97-300, §502(b)(1)(A), amended paragraph (1) in its entirety, effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

[5]P.L. 97-300, §502(b)(1)(B), struck out paragraph (2), and redesignated paragraph (3) as paragraph (2), effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

[6]P.L. 97-300, §502(b)(1)(C), struck out "Labor Market Advisory Council" and substituted "private industry council", effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

clauses (1) and (2) of section 432(b). Those not so selected shall be deemed suitable for the program established by clause (3) of such section 432(b) unless the Secretary finds that there is good cause for an individual not to participate in such program. The Secretary, in carrying out such program for individuals certified to him under section 402(a)(19)(G), shall accord priority to such individuals in the following order, taking into account employability potential: first, unemployed parents who are the principal earners (as defined in section 407)[1]; second, mothers, whether or not required to register pursuant to section 402(a)(19)(A), who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 402(a)(19)(A), who are under 19 years of age; fourth, dependent children and relatives who have attained age 16 and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to him.

(b)(1) For each State the Secretary shall develop jointly with the administrative unit of such State administering the special program referred to in section 402(a)(19)(G) a statewide operational plan.

(2) The statewide operational plan shall prescribe how the work incentive program established by this part will be operated at the local level, and shall indicate (i) for each area within the State the number and type of positions which will be provided for training, for on-the-job training, and for public service employment, (ii) the manner in which information provided by the private industry council under the Job Training Partnership Act[2] for any such area will be utilized in the operation of such program, and (iii) the particular State agency or administrative unit thereof which will be responsible for each of the various activities and functions to be performed under such program. Any such operational plan for any State must be approved by the Secretary, the administrative unit of such State administering the special program referred to in section 402(a)(19)(G), and the regional joint committee (established pursuant to section 439) for the area in which such State is located.

(3) The Secretary shall develop an employability plan for each suitable person certified to him pursuant to section 402(a)(19)(G) which shall describe the education, training, work experience, and orientation which it is determined that such person needs to complete in order to enable him to become self-supporting.

(c) The Secretary shall make maximum use of services available from other Federal and State agencies and, to the extent not otherwise available on a nonreimbursable basis, he may reimburse such agencies for services rendered to persons under this part.

(d) To the extent practicable and where necessary, work incentive programs established by this part shall include, in addition to the regular counseling, testing, and referral available through the Federal-State Employment Service System, program orientation,

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[1] P.L. 97-300, §502(c)(2), struck out "fathers" and substituted "parents who are the principal earners (as defined in section 407)", effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

[2] P.L. 97-300, §502(b)(2), struck out "Labor Market Advisory Council (established pursuant to section 432(f))" and substituted "private industry council under the Job Training Partnership Act", effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

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basic education, training in communications and employability skills, work experience, institutional training, on-the-job training, job development, and special job placement and followup services, required to assist participants in securing and retaining employment and securing possibilities for advancement.

(e)(1) In order to develop public service employment under the program established by section 432(b)(3), the Secretary shall enter into agreements with (A) public agencies, (B) private nonprofit organizations established to serve a public purpose, and (C) Indian tribes with respect to Indians on a reservation, under which individuals deemed suitable for participation in such a program will be provided work which serves a useful public purpose and which would not otherwise be performed by regular employees.

(2) Such agreements shall provide—

(A) for the payment by the Secretary to each employer, with respect to public service employment performed by any individual for such employer, of an amount not exceeding 100 percent of the cost of providing such employment to such individual during the first year of such employment, an amount not exceeding 75 percent of the cost of providing such employment to such individual during the second year of such employment, and an amount not exceeding 50 percent of the cost of providing such employment to such individual during the third year of such employment;

(B) the hourly wage rate and the number of hours per week individuals will be scheduled to work in public service employment for such employer;

(C) that the Secretary will have such access to the premises of the employer as he finds necessary to determine whether such employer is carrying out his obligations under the agreement and this part; and

(D) that the Secretary may terminate any agreement under this subsection at any time.

[(3) Repealed.[1]]

(4) No wage rates provided under any agreement entered into under this subsection shall be lower than the applicable minimum wage for the particular work concerned.

(f) Before entering into a project under section 432(b)(3), the Secretary shall have reasonable assurances that—

(1) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(2) such project will not result in the displacement of employed workers,

(3) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant,

(4) appropriate workmen's compensation protection is provided to all participants.

(g) Where an individual, certified to the Secretary of Labor pursuant to section 402(a)(19)(G) refuses without good cause to accept

[1]P.L. 92-223, §3(b)(4)(C); 85 Stat. 807.

employment or participate in a project under a program established by this part, the Secretary of Labor shall (after providing opportunity for fair hearing) notify the State agency which certified such individual and submit such other information as he may have with respect to such refusal.

(h) With respect to individuals who are participants in public service employment under the program established by section 432(b)(3), the Secretary shall periodically (but at least once every six months) review the employment record of each such individual while on such special work project and on the basis of such record and such other information as he may acquire determine whether it would be feasible to place such individual in regular employment or on any of the projects under the programs established by section 432(b)(1) and (2).

(i) In planning for activities under this section, the chief executive officer of each State shall make every effort to coordinate such activities with activities provided by the appropriate private industry council and chief elected official or officials under the Job Training Partnership Act[1].[2]

INCENTIVE PAYMENT

SEC. 434. [42 U.S.C. 634] (a) The Secretary is authorized to pay to any participant under a program established by section 432(b)(2) an incentive payment of not more than $30 per month, payable in such amounts and at such times as the Secretary prescribes.

(b) The Secretary of Labor is also authorized to pay, to any member of a family participating in manpower training under this part, allowances for transportation and other costs incurred by such member, to the extent such costs are necessary to and directly related to the participation by such member in such training.

FEDERAL ASSISTANCE

SEC. 435. [42 U.S.C. 635] (a) Federal assistance under this part shall not exceed 90 per centum of the costs of carrying out this part. Non-Federal contributions may be cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(b) Costs of carrying out this part include costs of training, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the Secretary, but may not include any reimbursement for time spent by participants in work, training, or other participation in the program.

PERIOD OF ENROLLMENT

SEC. 436. [42 U.S.C. 636] (a) The program established by section 432(b)(2) shall be designed by the Secretary so that the average period of enrollment under all projects under such program throughout any area of the United States will not exceed one year.

(b) Services provided under this part may continue to be provided to an individual for such period as the Secretary determines (in

[1] P.L. 97-300.

[2] P.L. 97-300, §502(c)(3), added subsection (i), effective October 1, 1983, but the Secretary of Labor is authorized to use funds appropriated for fiscal year 1983 to plan for the orderly implementation of such amendment.

accordance with regulations prescribed jointly by him and the Secretary of Health, Education, and Welfare) is necessary to qualify him fully for employment even though his earnings disqualify him from aid under a State plan approved under section 402.

RELOCATION OF PARTICIPANTS

SEC. 437. [42 U.S.C. 637] The Secretary may assist participants to relocate their place of residence when he determines such relocation is necessary in order to enable them to become permanently employable and self-supporting. Such assistance shall be given only to participants who concur in their relocation and who will be employed at their place of relocation at wage rates which will meet at least their full need as determined by the State to which they will be relocated. Assistance under this section shall not exceed the reasonable costs of transportation for participants, their dependents, and their household belongings plus such relocation allowance as the Secretary determines to be reasonable.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 438. [42 U.S.C. 638] Participants in programs established by this part shall be deemed not to be Federal employees and shall not be subject to the provisions of laws relating to Federal employment, including those relating to hours of work, rates of compensation, leave, unemployment compensation, and Federal employee benefits.

RULES AND REGULATIONS

SEC. 439. [42 U.S.C. 639] The Secretary and the Secretary of Health, Education, and Welfare shall, not later than July 1, 1972, issue regulations to carry out the purposes of this part. Such regulations shall provide for the establishment, jointly by the Secretary and the Secretary of Health, Education, and Welfare, of (1) a national coordination committee the duty of which shall be to establish uniform reporting and similar requirements for the administration of this part, and (2) a regional coordination committee for each region which shall be responsible for review and approval of statewide operational plans developed pursuant to section 433(b).

ANNUAL REPORT

SEC. 440. [42 U.S.C. 640] The Secretary shall annually report to the Congress (with the first such report being made on or before July 1, 1970) on the work incentive programs established by this part.

EVALUATION AND RESEARCH

SEC. 441. [42 U.S.C. 641] (a)[1] The Secretary shall (jointly with the Secretary of Health, Education, and Welfare) provide for the continuing evaluation of the work incentive programs established by this part, including their effectiveness in achieving stated goals and their impact on other related programs. He also may conduct research regarding ways to increase the effectiveness of such programs. He may, for this purpose, contract for independent evaluations of and

[1]As in original. Should delete "(a)", as there is no subsection (b).

research regarding such programs or individual projects under such programs. For purposes of sections 435 and 443, the costs of carrying out this section shall not be regarded as costs of carrying out work incentive programs established by this part. Nothing in this section shall be construed as authorizing the Secretary to enter into any contract with any organization after June 1, 1970, for the dissemination by such organization of information about programs authorized to be carried on under this part.

TECHNICAL ASSISTANCE FOR PROVIDERS OF EMPLOYMENT OR TRAINING

SEC. 442. [42 U.S.C. 642] The Secretary is authorized to provide technical assistance to providers of employment or training to enable them to participate in the establishment and operation of programs authorized to be established by section 432(b).

COLLECTION OF STATE SHARE

SEC. 443. [42 U.S.C. 643] If a non-Federal contribution of 10 per centum of the costs of the work incentive programs established by this part is not made in any State (as specified in section 402(a)), the Secretary of Health, Education, and Welfare may withhold any action under section 404 because of the State's failure to comply substantially with a provision required by section 402. If the Secretary of Health, Education, and Welfare does withhold such action, he shall, after reasonable notice and opportunity for hearing to the appropriate State agency or agencies, withhold any payments to be made to the State under sections 3(a), 403(a), 1003(a), 1403(a), 1603(a), and 1903(a) until the amount so withheld (including any amounts contributed by the State pursuant to the requirement in section 402(a)(19)(C)) equals 10 per centum of the costs of such work incentive programs. Such withholding shall remain in effect until such time as the Secretary has assurances from the State that such 10 per centum will be contributed as required by section 402. Amounts so withheld shall be deemed to have been paid to the State under such sections and shall be paid by the Secretary of Health, Education, and Welfare to the Secretary. Such payment shall be considered a non-Federal contribution for purposes of section 435.

AGREEMENTS WITH OTHER AGENCIES PROVIDING ASSISTANCE TO FAMILIES OF UNEMPLOYED PARENTS

SEC. 444. [42 U.S.C. 644] (a) The Secretary is authorized to enter into an agreement (in accordance with the succeeding provisions of this section) with any qualified State agency (as described in subsection (b)) under which the program established by the preceding sections of this part C will (except as otherwise provided in this section) be applicable to individuals certified by such State agency in the same manner, to the same extent, and under the same conditions as such program is applicable with respect to individuals certified to the Secretary by a State agency administering or supervising the administration of a State plan approved by the Secretary of Health, Education, and Welfare under part A of this title.

(b) A qualified State agency referred to in subsection (a) is a State agency which is charged with the administration of a program—

(1) the purpose of which is to provide aid or assistance to the families of unemployed parents,

(2) which is not established pursuant to part A of title IV of the Social Security Act,

(3) which is financed entirely from funds appropriated by the Congress, and

(4) none of the financing of which is made available under any program established pursuant to title V of the Economic Opportunity Act[1].

(c)(1) Any agreement under this section with a qualified State agency shall provide that such agency will, with respect to all individuals receiving aid or assistance under the program of aid or assistance to families of unemployed parents administered by such agency, comply with the requirements imposed by section 402(a)(19) in the same manner and to the same extent as if (A) such qualified agency were the agency in such State administering or supervising the administration of a State plan approved under part A of this title, and (B) individuals receiving aid or assistance under the program administered by such qualified agency were recipients of aid under a State plan which is so approved.

(2) Any agreement entered into under this section shall remain in effect for such period as may be specified in the agreement by the Secretary and the qualified State agency, except that, whenever the Secretary determines, after reasonable notice and opportunity for hearing to the qualified State agency, that such agency has failed substantially to comply with its obligations under such agreement, the Secretary may suspend operation of the agreement until such time as he is satisfied that the State agency will no longer fail substantially to comply with its obligations under such agreement.

(3) Any such agreement shall further provide that the agreement will be inoperative for any calendar quarter if, for the preceding calendar quarter, the maximum amount of benefits payable under the program of aid or assistance to families of unemployed parents administered by the qualified State agency which is a party to such agreement is lower than the maximum amount of benefits payable under such program for the quarter which ended September 30, 1967.

(d) The Secretary shall, at the request of any qualified State agency referred to in subsection (a) of this section and upon receipt from it of a list of the names of individuals rereferred[2] to the Secretary, furnish to such agency the names of each individual on such list participating in public service employment under section 433(a)(3) whom the Secretary determines should continue to participate in such employment. The Secretary shall not comply with any such request with respect to an individual on such list unless such individual has been certified to the Secretary by such agency under section 402(a)(19)(G) for a period of at least six months.

WORK INCENTIVE DEMONSTRATION PROGRAM[3]

SEC. 445. [42 U.S.C. 645] (a) Notwithstanding any other provision of this part and part A of this title, any State may elect as an alternative to the work incentive program otherwise provided in this part, and subject to the provisions of this section, to operate a work

[1] P.L. 88-452, [repealed by P.L. 97-35, §683(a); 95 Stat. 519].

[2] As in law.

[3] P.L. 97-35, §2309, added §445. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2321, p. 785.

incentive demonstration program for the purpose of demonstrating single agency administration of the work-related objectives of this Act, and to receive payments under the provisions of this section.

(b)(1) Not later than June 30, 1984[1], the Governor of a State which desires to operate a work incentive demonstration program under this section shall submit to the Secretary of Health and Human Services a letter of application stating such intent. Accompanying the letter of application shall be a State program plan which must—

(A) provide that the agency conducting the demonstration program within the State shall be the single State agency which administers or supervises the administration of the State plan under part A of this title;

(B) provide that all persons eligible for or receiving assistance under the aid to families with dependent children program shall be eligible to participate in, and shall be required to participate in, the work incentive demonstration program, subject to the same criteria for participation in such demonstration program as are in effect under this part and part A during the month before the month in which the demonstration program commences, but subject to waiver of such criteria as provided under section 1115[2];

(C) provide that the criteria for participation in the work incentive demonstration program shall be uniform throughout the State;

(D) provide a statement of the objectives which the State expects to meet through operation of a work incentive demonstration program, with emphasis on how the State expects to maximize client placement in nonsubsidized private sector employment;

(E) describe the techniques to be used to achieve the objectives of the work incentive demonstration program, which may include but shall not be limited to: maximum periods of participation, job training, job find clubs, grant diversion to either public or private sector employers, services contracts with State employment services, prime sponsors under the Comprehensive Employment and Training Act of 1973[3], or private placement agencies, targeted jobs tax credit outreach campaigns, and performance-based placement incentives; and

(F) set forth the format and frequency of reporting of information regarding operation of the work incentive demonstration program.

(2) A State's application to participate in the work incentive demonstration program shall be deemed approved unless the Secretary of Health and Human Services notifies the State in writing of disapproval within forty-five days of the date of application. The Secretary of Health and Human Services shall set forth the reasons for disapproval and provide an opportunity for resubmission of the plan within forty-five days of the receipt of the notice of disapproval. An application shall not be finally disapproved unless the Secretary

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[1]P.L. 97-248, §158(a), struck out "sixty days following the date of the enactment of this section" and substituted "June 30, 1984", effective September 3, 1982.

[2]P.L. 97-248, §158(b), inserted ", but subject to waiver of such criteria as provided under section 1115", effective September 3, 1982.

[3]P.L. 93-203.

P.L. 97-300, §184(a)(1), repealed that law effective October 13, 1982; and §183 deems references to the Comprehensive Employment and Training Act to be to the Job Training Partnership Act [P.L. 97-300, approved October 13, 1982].

of Health and Human Services determines that the State's program plan would be less effective than the requirements set forth in this title, other than this section.

(3) The Secretary of Health and Human Services shall furnish copies of approved plans, statistical reports, and evaluation reports to the Secretary of Labor.

(c) Subject to the statement of objectives and description of techniques to be used in implementing its work incentive demonstration program, as set forth in its program plan, a State shall be free to design a program which best addresses its individual needs, makes best use of its available resources, and recognizes its labor market conditions. Other than criteria for participation in the State's work incentive demonstration project, which shall be uniform throughout the State, the components of the program may vary by geographic area or by political subdivision.

(d) A State's work incentive demonstration program, if initially approved, shall be in force for a three-year period. During this period, the State may elect to use up to six months for planning purposes. During such planning period, all requirements of part A and this part C shall remain in full force and effect.

(e) The Secretary of Health and Human Services shall conduct two evaluations of a State's work incentive demonstration program. The first evaluation shall be conducted at the conclusion of the first twelve months of operation of the demonstration program. The second evaluation shall be conducted at the conclusion of the demonstration program. Both evaluations shall compare placement rates during the demonstration program with placement rates achieved during a number of previous years, to be determined by the Secretary of Health and Human Services.

(f)(1) For each year of its demonstration program, a State which is operating such program shall be funded in an amount equal to its initial annual 1981 allocation under the work incentive program set forth in this part, plus any other Federal funds which the State may properly receive under any statute for establishing work programs for recipients of aid to families with dependent children.

(2) Such funds shall only be used by the State for administering and operating its work incentive demonstration program. These funds shall not be used for direct grants of assistance under the aid to families with dependent children program.

(g) Earnings derived from participation in a State's work incentive demonstration program shall not result in a determination of financial ineligibility for assistance under the aid to families with dependent children program.

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY[1]

APPROPRIATION

SEC. 451. [42 U.S.C. 651] For the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living[2], locating absent parents, establishing paternity, and obtaining child and spousal[3] support, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this part.

DUTIES OF THE SECRETARY

SEC. 452. [42 U.S.C. 652] (a) The Secretary shall establish, within the Department of Health, Education, and Welfare a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

(1) establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse) with whom the absent parent's child is living[4] as he determines to be necessary to assure that such programs will be effective;

(2) establish minimum organizational and staffing requirements for State units engaged in carrying out such programs under plans approved under this part;

(3) review and approve State plans for such programs;

(4) evaluate the implementation of State programs established pursuant to such plan, conduct such audits of State programs established under the plan approved under this part as may be necessary to assure their conformity with the requirements of this part, and, not less often than annually, conduct a complete audit of the programs established under such plan in each State and determine for the purposes of the penalty provision of section 403(h) whether the actual operation of such programs in each State conforms to the requirements of this part;

(5) assist States in establishing adequate reporting procedures and maintain records of the operations of programs established pursuant to this part in each State;

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[1]See 29 U.S.C. 49b, "Wagner-Peyser Act", for the requirement that State employment offices supply data in aid of administration of the Aid to Families With Dependent Children and child support programs.

See P.L. 83-591, "Internal Revenue Code of 1954", § 6103(l)(1) with respect to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, §7213(a)(1) with respect to the penalty for unauthorized disclosure of that tax return information, and §7217 with respect to civil damages for unauthorized disclosure of that tax information.

See P.L. 95-630, "Financial Institutions Regulatory and Interest Rate Control Act of 1978", §§1101-1121, with respect to an individual's right to financial privacy.

See P.L. 96-611, [Social Security Act, Amendment—Parental Kidnaping], §§7, 8(c), 10, and 11(b)(2), with respect to cases involving parental kidnaping.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §176, with respect to delayed effective date in cases requiring State legislation.

[2]P.L. 97-35, §2332(a), inserted "and the spouse (or former spouse) with whom such children are living". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3]P.L. 97-35, §2332(a), inserted "and spousal". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[4]P.L. 97-35, §2332(b)(1)(A), inserted "and support for the spouse (or former spouse) with whom the absent parent's child is living". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

(6) maintain records of all amounts collected and disbursed under programs established pursuant to the provisions of this part and of the costs incurred in collecting such amounts;

(7) provide technical assistance to the States to help them establish effective systems for collecting child and spousal[1] support and establishing paternity;

(8) receive applications from States for permission to utilize the courts of the United States to enforce court orders for support against absent parents and, upon a finding that (A) another State has not undertaken to enforce the court order of the originating State against the absent parent within a reasonable time, and (B) that utilization of the Federal courts is the only reasonable method of enforcing such order, approve such applications;

(9) operate the Parent Locator Service established by section 453; and

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the number of child support cases (with separate identification of the number in which collection of spousal support was involved)[2] in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal

[1] P.L. 97-35, §2332(b)(1)(B), inserted "and spousal". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 97-35, §2332(b)(1)(C), inserted "(with separate identification of the number in which collection of spousal support was involved)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 402(a)(26)(B)(ii));

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government; and

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report.

The information contained in any such report under subparagraph (A) shall specifically include (i) the total amount of child support payments collected as a result of services furnished during the fiscal year involved to individuals under section 454(6), (ii) the cost to the States and to the Federal Government of furnishing such services to those individuals, and (iii) the extent to which the furnishing of such services was successful in providing sufficient support to those individuals to assure that they did not require assistance under the State plan approved under part A.

(b) The Secretary shall, upon the request of any State having in effect a State plan approved under this part, certify to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954[1] the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A) which is assigned to such State or is undertaken to be collected by such State pursuant to section 454(6).[2] No amount may be certified for collection under this subsection except the amount of the delinquency under a court or administrative[3] order for support and upon a showing by the State that such State has made diligent and reasonable efforts to collect such amounts utilizing its own collection mechanisms, and upon an agreement that the State will reimburse the Secretary of the Treasury[4] for any costs involved in making the collection. All

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[1] P.L. 83-591.

[2] P.L. 97-248, §175(a)(1), struck out "the amount of any child support obligation assigned to such State, including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A, [*] (or undertaken to be collected by such State pursuant to section 454(6)) to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954.", and substituted "to the Secretary of the Treasury for collection pursuant to the provisions of section 6305 of the Internal Revenue Code of 1954 the amount of any child support obligation (including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A) which is assigned to such State or is undertaken to be collected by such State pursuant to section 454(6).", effective as of October 1, 1981.

* P.L. 97-35, §2332(b)(2)(A), inserted ", including any support obligation with respect to the parent who is living with the child and receiving aid under the State plan approved under part A,". This amendment was executed as if §2332(b)(2)(A) makes the insertion following "assigned to such State". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 97-35, §2332(b)(2)(B), inserted "or administrative". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[4] P.L. 97-35, §2332(b)(2)(C), struck out "United States" and substituted "Secretary of the Treasury". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

reimbursements shall be credited to the apppropriation accounts which bore all or part of the costs involved in making the collections.[1] The Secretary after consultation with the Secretary of the Treasury may, by regulation, establish criteria for accepting amounts for collection and for making certification under this subsection including imposing such limitations on the frequency of making such certifications under this subsection.

(c)(1) There is hereby established in the Treasury a revolving fund which shall be available to the Secretary without fiscal year limitation, to enable him to pay to the States for distribution in accordance with the provisions of section 457 such amounts as may be collected and paid (subject to paragraph (2)) into such fund under section 6305 of the Internal Revenue Code of 1954[2].

(2) There is hereby appropriated to the fund, out of any moneys in the Treasury not otherwise appropriated, amounts equal to the amounts collected under section 6305 of the Internal Revenue Code of 1954[3], reduced by the amounts credited or refunded as overpayments of the amounts so collected. The amounts appropriated by the preceding section shall be transferred at least quarterly from the general fund of the Treasury to the fund on the basis of estimates made by the Secretary of the Treasury. Proper adjustments shall be made in the amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(d)(1) The Secretary shall not approve the initial and annually updated advance automatic data processing planning document, referred to in section 454(16), unless he finds that such document, when implemented, will generally carry out the objectives of the management system referred to in such subsection, and such document—

(A) provides for the conduct of, and reflects the results of, requirements analysis studies, which include consideration of the program mission, functions, organization, services, constraints, and current support, of, in, or relating to, such system,

(B) contains a description of the proposed management system referred to in section 455(a)(3), including a description of information flows, input data, and output reports and uses,

(C) sets forth the security and interface requirements to be employed in such management system,

(D) describes the projected resource requirements for staff and other needs, and the resources available or expected to be available to meet such requirements,

(E) contains an implementation plan and backup procedures to handle possible failures,

(F) contains a summary of proposed improvement of such management system in terms of qualitative and quantitative benefits, and

(G) provides such other information as the Secretary determines under regulation is necessary.

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[1] P.L. 97-35, §2332(b)(2)(D), added the preceding sentence. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 83-591.

[3] P.L. 83-591.

(2)(A) The Secretary shall through the separate organizational unit established pursuant to subsection (a), on a continuing basis, review, assess, and inspect the planning, design, and operation of, management information systems referred to in section 455(a)(3), with a view to determining whether, and to what extent, such systems meet and continue to meet requirements imposed under paragraph (1) and the conditions specified under section 454(16).

(B) If the Secretary finds with respect to any statewide management information system referred to in section 455(a)(3) that there is a failure substantially to comply with criteria, requirements, and other undertakings, prescribed by the advance automatic data processing planning document theretofore approved by the Secretary with respect to such system, then the Secretary shall suspend his approval of such document until there is no longer any such failure of such system to comply with such criteria, requirements, and other undertakings so prescribed.[1]

(e) The Secretary shall provide such technical assistance to States as he determines necessary to assist States to plan, design, develop, or install and provide for the security of, the management information systems referred to in section 455(a)(3).[2]

PARENT LOCATOR SERVICE

SEC. 453. [42 U.S.C. 653] (a) The Secretary shall establish and conduct a Parent Locator Service, under the direction of the designee of the Secretary referred to in section 452(a), which shall be used to obtain and transmit to any authorized person (as defined in subsection (c)) information as to the whereabouts of any absent parent when such information is to be used to locate such parent for the purpose of enforcing support obligations against such parent.[3]

(b) Upon request, filed in accordance with subsection (d) of any authorized person (as defined in subsection (c)) for the most recent address and place of employment of any absent parent, the Secretary shall, notwithstanding any other provision of law, provide through the Parent Locator Service such information to such person, if such information—

(1) is contained in any files or records maintained by the Secretary or by the Department of Health, Education, and Welfare; or

(2) is not contained in such files or records, but can be obtained by the Secretary, under the authority conferred by subsection (e), from any other department, agency, or instrumentality, or[4] the United States or of any State.

No information shall be disclosed to any person if the disclosure of such information would contravene the national policy or security interests of the United States or the confidentiality of census data.

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[1] P.L. 96-265, §405(c), added subsection (d), effective July 1, 1981, only with respect to expenditures, referred to in §455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

[2] P.L. 96-265, §405(d), added subsection (e), effective July 1, 1981, only with respect to expenditures, referred to in §455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

[3] P.L. 97-35, §2333(c), added "In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

P.L. 97-248, §171(b)(2), relocated that sentence in §455(a), effective on and after August 13, 1981.

[4] As in original. Should be "of".

The Secretary shall give priority to requests made by any authorized person described in subsection (c)(1).

(c) As used in subsection (a), the term "authorized person" means—

(1) any agent or attorney of any State having in effect a plan approved under this part, who has the duty or authority under such plans to seek to recover any amounts owed as child and spousal[1] support (including, when authorized under the State plan, any official of a political subdivision);

(2) the court which has authority to issue an order against an absent parent for the support and maintenance of a child, or any agent of such court; and

(3) the resident parent, legal guardian, attorney, or agent of a child (other than a child receiving aid under part A of this title) (as determined by regulations prescribed by the Secretary) without regard to the existence of a court order against an absent parent who has a duty to support and maintain any such child.

(d) A request for information under this section shall be filed in such manner and form as the Secretary shall by regulation prescribe and shall be accompanied or supported by such documents as the Secretary may determine to be necessary.

(e)(1) Whenever the Secretary receives a request submitted under subsection (b) which he is reasonably satisfied meets the criteria established by subsections (a), (b), and (c), he shall promptly undertake to provide the information requested from the files and records maintained by any of the departments, agencies, or instrumentalities of the United States or of any State.

(2) Notwithstanding any other provision of law, whenever the individual who is the head of any department, agency, or instrumentality of the United States receives a request from the Secretary for information authorized to be provided by the Secretary under this section, such individual shall promptly cause a search to be made of the files and records maintained by such department, agency, or instrumentality with a view to determining whether the information requested is contained in any such files or records. If such search discloses the information requested, such individual shall immediately transmit such information to the Secretary, except that if any information is obtained the disclosure of which would contravene national policy or security interests of the United States or the confidentiality of census data, such information shall not be transmitted and such individual shall immediately notify the Secretary. If such search fails to disclose the information requested, such individual shall immediately so notify the Secretary. The costs incurred by any such department, agency, or instrumentality of the United States or of any State in providing such information to the Secretary shall be reimbursed by him. Whenever such services are furnished to an individual specified in subsection (c)(3), a fee shall be charged such individual. The fee so charged shall be used to reimburse the Secretary or his delegate for the expense of providing such services.

(f) The Secretary, in carrying out his duties and functions under this section, shall enter into arrangements with State agencies administering State plans approved under this part for such State

[1] P.L. 97-35, §2332(c), inserted "and spousal". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

agencies to accept from resident parents, legal guardians, or agents of a child described in subsection (c)(3) and, after determining that the absent parent cannot be located through the procedures under the control of such State agencies, to transmit to the Secretary requests for information with regard to the whereabouts of absent parents and otherwise to cooperate with the Secretary in carrying out the purposes of this section.

STATE PLAN FOR CHILD AND SPOUSAL[1] SUPPORT

SEC. 454. [42 U.S.C. 654] A State plan for child and spousal[2] support must—

(1) provide that it shall be in effect in all political subdivisions of the State;

(2) provide for financial participation by the State;

(3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;

(4) provide that such State will undertake—

(A) in the case of a child born out of wedlock with respect to whom an assignment under section 402(a)(26) of this title is effective, to establish the paternity of such child, unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so, and

(B) in the case of any child with respect to whom such assignment is effective, to secure support for such child from his parent (or from any other person legally liable for such support) and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse)[3], utilizing any reciprocal arrangements adopted with other States (unless the agency administering the plan of the State under part A of this title determines in accordance with the standards prescribed by the Secretary pursuant to section 402(a)(26)(B) that it is against the best interests of the child to do so), except that when such arrangements and other means have proven ineffective, the State may utilize the Federal courts to obtain or enforce court orders for support;

(5) provide that, in any case in which[4] support payments are collected for an individual[5] with respect to whom an assignment under section 402(a)(26) is effective, such payments shall be made

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[1] P.L. 97-35, §2332(d)(1), inserted "AND SPOUSAL". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 97-35, §2332(d)(2), inserted "and spousal". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 97-35, §2332(d)(3), inserted "and, at the option of the State, from such parent for his spouse (or former spouse) receiving aid to families with dependent children (but only if a support obligation has been established with respect to such spouse)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[4] P.L. 97-35, §2332(d)(4), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[5] P.L. 97-35, §2332(d)(4), struck out "a child" and substituted "an individual". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

to the State for distribution pursuant to section 457 and shall not be paid directly to the family except that this paragraph shall not apply to such payments (except as provided in section 457(c)) for any month following the first month[1] in which the amount collected is sufficient to make such family ineligible for assistance under the State plan approved under part A;

(6) provide that (A) the child support collection or paternity determination services established under the plan shall be made available to any individual not otherwise eligible for such services upon application filed by such individual with the State, including, at the option of the State, support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse),[2] (B) an application fee for furnishing such services[3] may be imposed, except that the amount of any such application fee shall be reasonable, as determined under regulations of the Secretary, and (C) any costs in excess of the fee so imposed may be collected—

(i) from the parent who owes the child or spousal support obligation involved, or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;[4]

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that the agency administering the plan will establish a service to locate absent parents utilizing—

(A) all sources of information and available records, and

(B) the Parent Locator Service in the Department of Health, Education, and Welfare;[5]

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State—

(A) in establishing paternity, if necessary,

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[1]P.L. 97-248, §173(a), inserted "following the first month", effective October 1, 1982.

[2]P.L. 97-248, §171(a)(1), inserted "including, at the option of the State, support collection services for the spouse (or former spouse) with whom the absent parent's child is living (but only if a support obligation has been established with respect to such spouse),", effective on and after August 13, 1981.

[3]P.L. 97-35, §2333(a)(1), struck out "such services" and substituted "services under the State plan (other than collection of support)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

P.L. 97-248, §171(a)(2), struck out "services under the State plan (other than collection of support)" and substituted "such services", effective on and after August 13, 1981.

[4]P.L. 97-35, §2333(a)(2), amended subparagraph (C) in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

P.L. 97-248, §171(a)(3), also amended subparagraph (C) in its entirety, effective on and after August 13, 1981. [House Conference Report 97-760 on P.L. 97-248, p. 452.]

[5]See P.L. 83-591, "Internal Revenue Code of 1954", §6103(l)(6), with respect to disclosure to child support enforcement agencies.

(B) in locating an absent parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State,

(C) in securing compliance by an absent parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such[1] child or children of such parent with respect to whom aid is being provided under the plan of such other State, and

(D) in carrying out other functions required under a plan approved under this part;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11) provide that amounts collected as[2] support shall be distributed as provided in section 457;

(12) provide that any payment required to be made under section 456 or 457 to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

(16) provide, at the option of the State, for the establishment, in accordance with an (initial and annually updated) advance automatic data processing planning document approved under section 452(d), of an automatic data processing and information retrieval system designed effectively and efficiently to assist management in the administration of the State plan, in the State and localities thereof, so as (A) to control, account for, and monitor (i) all the factors in the[3] support enforcement collection and paternity determination process under such plan (including, but not limited to, (I) identifiable correlation factors (such as

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[1] P.L. 97-35, §2332(d)(5), struck out "a" and substituted "the child or children or the parent of such". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 97-35, §2332(d)(6), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 97-35, §2332(d)(7), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

social security numbers, names, dates of birth, home addresses and mailing addresses (including postal ZIP codes) of any individual with respect to whom[1] support obligations are sought to be established or enforced and with respect to any person to whom such support obligations are owing) to assure sufficient compatibility among the systems of different jurisdictions to permit periodic screening to determine whether such individual is paying or is obligated to pay[2] support in more than one jurisdiction, (II) checking of records of such individuals on a periodic basis with Federal, intra- and inter-State, and local agencies, (III) maintaining the data necessary to meet the Federal reporting requirements on a timely basis, and (IV) delinquency and enforcement activities), (ii) the collection and distribution of support payments (both intra- and inter-State), the determination, collection and distribution, of incentive payments both inter- and intra-State, and the maintenance of accounts receivable on all amounts owed, collected and distributed, and (iii) the costs of all services rendered, either directly or by interfacing with State financial management and expenditure information, (B) to provide interface with records of the State's aid to families with dependent children program in order to determine if a collection of a support payment causes a change affecting eligibility for or the amount of aid under such program, (C) to provide for security against unauthorized access to, or use of, the data in such system, and (D) to provide management information on all cases under the State plan from initial referral or application through collection and enforcement;[3]

(17) in the case of a State which has in effect an agreement with the Secretary entered into pursuant to section 463 for the use of the Parent Locator Service established under section 453, to accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, and to impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, to transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect, otherwise to comply with such agreement and regulations of the Secretary with respect thereto;

(18) provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 464, and take all steps necessary to implement and utilize such procedures;[4] and[5]

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[1] P.L. 97-35, §2332(d)(7), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 97-35, §2332(d)(7), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 96-265, §405(b)(3), added paragraph (16), effective July 1, 1981, only with respect to expenditures, referred to in §455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

[4] P.L. 97-35, §2331(b)(3), added paragraph (18). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[5] P.L. 97-35, §2333(b)(2), struck out the period at the end of paragraph (18) and substituted "; and". P.L. 97-35, §2335(a), struck out the "and" at the end of paragraph (18). P.L. 97-248, §171(b)(1)(A), added "and" at the end of paragraph (18), effective on and after August 13, 1981.

(19)[1] provide that the agency administering the plan—

(A) shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976[2] , whether any individuals receiving compensation under the State's employment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency, and

(B) shall enforce any such child support obligations which are owed by such an individual but are not being met—

(i) through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law, or

(ii) in the absence of such an agreement, by bringing legal process (as defined in section 462(e) of this Act) to require the withholding of amounts from such compensation.[3]

PAYMENTS TO STATES

SEC. 455. [42 U.S.C. 655] (a) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter commencing July 1, 1975, an amount—

(1) equal to 70[4] percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 454,

(2) equal to 50 percent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 454 except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law, and[5]

(3) equal to 90 percent (rather than the percent specified in clause (1) or (2)) of so much of the sums expended during such quarter as are attributable to the planning, design, development, installation or enhancement of an automatic data processing and information retrieval system which the Secretary finds meets the requirements specified in section 454(16);[6]

except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered

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[1]P.L. 97-35, §2333(b)(3), added paragraph (19). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

P.L. 97-248, §171(b)(1)(B), struck out that paragraph (19), effective on and after August 13, 1983.

P.L. 97-248, §171(b)(1)(C), redesignated paragraph (20) as paragraph (19), effective on and after August 13, 1981.

[2]P.L. 94-566.

[3]P.L. 97-35, §2335(a), added this paragraph as paragraph (20), effective August 13, 1981, except that such amendment shall not be a requirement under §454 or §303 of the Act before October 1, 1982.

[4]P.L. 97-248, §174(a), struck out "75" and substituted "70", applicable with respect to quarters beginning on or after October 1, 1982.

[5]See 29 U.S.C. 49b, "Wagner-Peyser Act", for the requirement that State employment offices supply data in aid of administration of the Aid to Families With Dependent Children and child support programs.

[6]P.L. 96-265, §405(a)(3), added paragraph (3), effective July 1, 1981, only with respect to expenditures, referred to in §455(a)(3) of the Act (as amended by P.L. 96-265), made on or after that date.

into pursuant to section 463.[1] In determining the total amounts expended by any State during a quarter, for purposes of this subsection, there shall be excluded an amount equal to the total of any fees collected or other income resulting from services provided under the plan approved under this part.[2]

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) Subject to subsection (d), the Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

[(c) Repealed.[3]]

(d) Notwithstanding any other provision of law, no amount shall be paid to any State under this section for any quarter, prior to the close of such quarter, unless for the period consisting of all prior quarters for which payment is authorized to be made to such State under subsection (a), there shall have been submitted by the State to the Secretary, with respect to each quarter in such period (other than the last two quarters in such period), a full and complete report (in such form and manner and containing such information as the Secretary shall prescribe or require) as to the amount of child support collected and disbursed and all expenditures with respect to which payment is authorized under subsection (a).

SUPPORT OBLIGATIONS

SEC. 456. [42 U.S.C. 656] (a) The support rights assigned to the State under section 402(a)(26) shall constitute an obligation owed to such State by the individual responsible for providing such support. Such obligation shall be deemed for collection purposes to be collectible under all applicable State and local processes.

(1) The amount of such obligation shall be—

(A) the amount specified in a court order which covers the assigned support rights, or

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[1] P.L. 96-611, §9(c), added "except that no amount shall be paid to any State on account of amounts expended to carry out an agreement which it has entered into pursuant to section 463." after paragraph (3).

P.L. 96-611, §11(c), then struck out the semicolon at the end of §455(a) and substituted a period. Due to the amendment made by P.L. 96-611, §9(c), there was no closing semicolon to be replaced.

[2] P.L. 97-35, §2333(c) [as amended effective on and after August 13, 1981, by P.L. 97-248, §171(b)(2)], added the preceding sentence. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 97-248, §174(b), repealed subsection (c), applicable with respect to quarters beginning on or after October 1, 1983.

(B) if there is no court order, an amount determined by the State in accordance with a formula approved by the Secretary, and

(2) Any[1] amounts collected from an absent parent under the plan shall reduce, dollar for dollar, the amount of his obligation under paragraphs[2] (1)(A) and (B).

(b) A debt which is a child support obligation assigned to a State under section 402(a)(26) is not released by a discharge in bankruptcy under title 11, United States Code.[3]

DISTRIBUTION OF PROCEEDS

SEC. 457. [42 U.S.C. 657] (a) The amounts collected as child support by a State pursuant to a plan approved under this part during the 15 months beginning July 1, 1975, shall be distributed as follows:

(1) 40 per centum of the first $50 of such amounts as are collected periodically which represent monthly support payments shall be paid to the family without any decrease in the amount paid as assistance to such family during such month;

(2) such amounts as are collected periodically which are in excess of any amount paid to the family under paragraph (1) which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(3) such amounts as are in excess of amounts retained by the State under paragraph (2) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

(4) such amounts as are in excess of amounts required to be distributed under paragraphs (1), (2), and (3) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(b) The amounts collected as[4] support by a State pursuant to a plan approved under this part during any fiscal year beginning after September 30, 1976, shall be distributed as follows:

(1) such amounts as are collected periodically which represent monthly support payments shall be retained by the State to reimburse it for assistance payments to the family during such period (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing);

(2) such amounts as are in excess of amounts retained by the State under paragraph (1) and are not in excess of the amount required to be paid during such period to the family by a court order shall be paid to the family; and

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[1] As in original.

[2] As in original. Possibly should be "paragraph".

[3] P.L. 97-35, §2334(a), added subsection (b), effective August 13, 1981.

[4] P.L. 97-35, §2332(e)(1), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

(3) such amounts as are in excess of amounts required to be distributed under paragraphs (1) and (2) shall be (A) retained by the State (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing) as reimbursement for any past assistance payments made to the family for which the State has not been reimbursed or (B) if no assistance payments have been made by the State which have not been repaid, such amounts shall be paid to the family.

(c) Whenever a family for whom[1] support payments have been collected and distributed under the plan ceases to receive assistance under part A of this title, the State may—

(1) continue to collect amounts of[2] support payments which represent monthly support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this title, and pay all amounts so collected, which represent monthly support payments, to the family; and

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of[3] support payments which represent monthly support payments from the absent parent and pay the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made,

and so much of any amounts of[4] support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B) with respect to excess amounts described in subsection (b).

INCENTIVE PAYMENT TO STATES AND LOCALITIES

SEC. 458. [42 U.S.C. 658] (a) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, or a State on its own behalf makes, the enforcement and collection of the support rights assigned under section 402(a)(26) (either within or outside of such State), there shall be paid to such political subdivision, such other State, or such State (in the case of a State which on its own behalf makes such enforcement and collection) from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent an amount equal to 12 percent[5] of any amount collected and required to be distributed as provided in section 457 to reduce or repay assistance payments.

(b) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under subsection (a) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

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[1] P.L. 97-35, §2332(e)(2), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[2] P.L. 97-35, §2332(e)(2), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[3] P.L. 97-35, §2332(e)(2), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[4] P.L. 97-35, §2332(e)(2), struck out "child". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

[5] P.L. 97-248, §174(c), struck out "15 per centum" and substituted "12 percent", effective with respect to amounts collected on or after October 1, 1983.

(c) No payment under the preceding provisions of this section shall be made to any State or political subdivision thereof with respect to any amount collected and distributed by it unless such amount was collected and distributed in accordance with the State plan of the State approved by the Secretary as meeting the conditions required by section 454.

CONSENT BY THE UNITED STATES TO GARNISHMENT AND SIMILAR PROCEEDINGS FOR ENFORCEMENT OF CHILD SUPPORT AND ALIMONY OBLIGATIONS

SEC. 459. [42 U.S.C. 659] (a) Notwithstanding any other provision of law (including section 207)[1], effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 461 (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 461(b)(3) shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.

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[1] P.L. 98-21, §335(b)(1), inserted "(including section 207)", effective April 20, 1983.

(e) Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

CIVIL ACTIONS TO ENFORCE[1] SUPPORT OBLIGATIONS

SEC. 460. [42 U.S.C. 660] The district courts of the United States shall have jurisdiction, without regard to any amount in controversy, to hear and determine any civil action certified by the Secretary of Health, Education, and Welfare under section 452(a)(8) of this Act. A civil action under this section may be brought in any judicial district in which the claim arose, the plaintiff resides, or the defendant resides.

REGULATIONS PERTAINING TO GARNISHMENTS

SEC. 461. [42 U.S.C. 661] (a) Authority to promulgate regulations for the implementation of the provisions of section 459 shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a requirement that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought,

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents

[1] P.L. 97-35, §2332(f), struck out "CHILD". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a), is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

DEFINITIONS

SEC. 462. [42 U.S.C. 662] For purposes of section 459—

(a) The term "United States" means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term "child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or

former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(d) The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 228(h)(3) of this Act) or other payments to such individual under the insurance system established by title II of this Act or any other system or fund established by the United States (as defined in subsection (a)) which provides for the payment of pensions, retirement or retired pay, annuities, dependents[1] or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former

[1]As in original. Should be "dependents' ".

member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court-martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1954[1] may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

USE OF FEDERAL PARENT LOCATOR SERVICE IN CONNECTION WITH THE ENFORCEMENT OR DETERMINATION OF CHILD CUSTODY AND IN CASES OF PARENTAL KIDNAPING OF A CHILD

SEC. 463. [42 U.S.C. 663] (a) The Secretary shall enter into an agreement with any State which is able and willing to do so, under which the services of the Parent Locator Service established under section 453 shall be made available to such State for the purpose of determining the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

(b) An agreement entered into under this section shall provide that the State agency described in section 454 will, under procedures prescribed by the Secretary in regulations, receive and transmit to the Secretary requests from authorized persons for information as to (or useful in determining) the whereabouts of any absent parent or child when such information is to be used to locate such parent or child for the purpose of—

(1) enforcing any State or Federal law with respect to the unlawful taking or restraint of a child; or

(2) making or enforcing a child custody determination.

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[1] See P.L. 83-591, "Internal Revenue Code of 1954", §3402(i), p. 885.

(c) Information authorized to be provided by the Secretary under this section shall be subject to the same conditions with respect to disclosure as information authorized to be provided under section 453, and a request for information by the Secretary under this section shall be considered to be a request for information under section 453 which is authorized to be provided under such section. Only information as to the most recent address and place of employment of any absent parent or child shall be provided under this section.

(d) For purposes of this section—

(1) the term "custody determination" means a judgment, decree, or other order of a court providing for the custody or visitation of a child, and includes permanent and temporary orders, and initial orders and modification;

(2) the term "authorized person" means—

(A) any agent or attorney of any State having an agreement under this section, who has the duty or authority under the law of such State to enforce a child custody determination;

(B) any court having jurisdiction to make or enforce such a child custody determination, or any agent of such court; and

(C) any agent or attorney of the United States, or of a State having an agreement under this section, who has the duty or authority to investigate, enforce, or bring a prosecution with respect to the unlawful taking or restraint of a child.

COLLECTION OF PAST-DUE SUPPORT FROM FEDERAL TAX REFUNDS[1]

SEC. 464. [42 U.S.C. 664] (a) Upon receiving notice from a State agency administering a plan approved under this part that a named individual owes past-due support which has been assigned to such State pursuant to section 402(a)(26), the Secretary of the Treasury shall determine whether any amounts, as refunds of Federal taxes paid, are payable to such individual (regardless of whether such individual filed a tax return as a married or unmarried individual). If the Secretary of the Treasury finds that any such amount is payable, he shall withhold from such refunds an amount equal to the past-due support, and pay such amount to the State agency (together with notice of the individual's home address) for distribution in accordance with section 457(b)(3).

(b) The Secretary of the Treasury shall issue regulations, approved by the Secretary of Health and Human Services, prescribing the time or times at which States must submit notices of past-due support, the manner in which such notices must be submitted, and the necessary information that must be contained in or accompany the notices. The regulations shall specify the minimum amount of past-due support to which the offset procedure established by subsection (a) may be applied, and the fee that a State must pay to reimburse the Secretary of the Treasury for the full cost of applying the offset procedure, and provide that the Secretary of the Treasury will advise the Secretary of Health and Human Services, not less frequently than annually, of

[1]P.L. 97-35, §2331(a), added §464. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2336, p. 786.

the States which have furnished notices of past-due support under subsection (a), the number of cases in each State with respect to which such notices have been furnished, the amount of support sought to be collected under this subsection by each State, and the amount of such collections actually made in the case of each State.

(c) As used in this part the term "past-due support" means the amount of a delinquency, determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a child, or of a child and the parent with whom the child is living.

ALLOTMENTS FROM PAY FOR CHILD AND SPOUSAL SUPPORT OWED BY MEMBERS OF THE UNIFORMED SERVICES ON ACTIVE DUTY[1]

SEC. 465. [42 U.S.C. 665] (a)(1) In any case in which child support payments or child and spousal support payments are owed by a member of one of the uniformed services (as defined in section 101(3) of title 37, United States Code) on active duty, such member shall be required to make allotments from his pay and allowances (under chapter 13 of title 37, United States Code) as payment of such support, when he has failed to make periodic payments under a support order that meets the criteria specified in section 303(b)(1)(A) of the Consumer Credit Protection Act[2] (15 U.S.C. 1673(b)(1)(A)) and the resulting delinquency in such payments is in a total amount equal to the support payable for two months or longer. Failure to make such payments shall be established by notice from an authorized person (as defined in subsection (b)) to the designated official in the appropriate uniformed service. Such notice (which shall in turn be given to the affected member) shall also specify the person to whom the allotment is to be payable. The amount of the allotment shall be the amount necessary to comply with the order (which, if the order so provides, may include arrearages as well as amounts for current support), except that the amount of the allotment, together with any other amounts withheld for support from the wages of the member, as a percentage of his pay from the uniformed service, shall not exceed the limits prescribed in sections 303(b) and (c) of the Consumer Credit Protection Act[3] (15 U.S.C. 1673(b) and (c)). An allotment under this subsection shall be adjusted or discontinued upon notice from the authorized person.

(2) Notwithstanding the preceding provisions of this subsection, no action shall be taken to require an allotment from the pay and allowances of any member of one of the uniformed services under such provisions (A) until such member has had a consultation with a judge advocate of the service involved (as defined in section 801(13) of title 10, United States Code), or with a law specialist (as defined in section 801(11) of such title) in the case of the Coast Guard, or with a legal officer designated by the Secretary concerned (as defined in section 101(5) of title 37, United States Code) in any other case, in person, to discuss the legal and other factors involved with respect to the member's support obligation and his failure to make payments thereon, or (B) until 30 days have elapsed after the notice described in the second sentence of paragraph (1) is given to the affected

[1] P.L. 97-248, §172(a), added §465, effective October 1, 1982.
[2] P.L. 90-321.
[3] P.L. 90-321.

member in any case where it has not been possible, despite continuing good faith efforts, to arrange such a consultation.

(b) For purposes of this section the term "authorized person" with respect to any member of the uniformed services means—

(1) any agent or attorney of a State having in effect a plan approved under this part who has the duty or authority under such plan to seek to recover any amounts owed by such member as child or child and spousal support (including, when authorized under the State plan, any official of a political subdivision); and

(2) the court which has authority to issue an order against such member for the support and maintenance of a child, or any agent of such court.

(c) The Secretary of Defense, in the case of the Army, Navy, Air Force, and Marine Corps, and the Secretary concerned (as defined in section 101(5) of title 37, United States Code) in the case of each of the other uniformed services, shall each issue regulations applicable to allotments to be made under this section, designating the officials to whom notice of failure to make support payments, or notice to discontinue or adjust an allotment, should be given, prescribing the form and content of the notice and specifying any other rules necessary for such Secretary to implement this section.

PART E—FEDERAL PAYMENTS FOR FOSTER CARE AND ADOPTION ASSISTANCE[1]

PURPOSE; APPROPRIATION

SEC. 470. [42 U.S.C. 670] For the purpose of enabling each State to provide, in appropriate cases, foster care and adoption assistance for children who otherwise would be eligible for assistance under the State's plan approved under part A (or, in the case of adoption assistance, would be eligible for benefits under title XVI), there are authorized to be appropriated for each fiscal year (commencing with the fiscal year which begins October 1, 1980) such sums as may be necessary to carry out the provisions of this part. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans under this part.

STATE PLAN FOR FOSTER CARE AND ADOPTION ASSISTANCE

SEC. 471. [42 U.S.C. 671] (a) In order for a State to be eligible for payments under this part, it shall have a plan approved by the Secretary which—

(1) provides for foster care maintenance payments in accordance with section 472 and for adoption assistance payments in accordance with section 473;

(2) provides that the State agency responsible for administering the program authorized by part B of this title shall administer, or supervise the administration of, the program authorized by this part;

(3) provides that the plan shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(4) provides that the State shall assure that the programs at the local level assisted under this part will be coordinated with the programs at the State or local level assisted under parts A and B of this title, under title XX of this Act, and under any other appropriate provision of Federal law;

(5) provides that the State will, in the administration of its programs under this part, use such methods relating to the establishment and maintenance of personnel standards on a merit basis as are found by the Secretary to be necessary for the proper and efficient operation of the programs, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods;

(6) provides that the State agency referred to in paragraph (2) (hereinafter in this part referred to as the "State agency") will make such reports, in such form and containing such information as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

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[1] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §101(a)(2), with respect to the applicability of §408 (repealed) to a State plan approved under part E of this title.
See P.L. 96-272, §101(b), with respect to the Secretary's report to Congress on foster care and adoption.

(7) provides that the State agency will monitor and conduct periodic evaluations of activities carried out under this part;

(8) provides safeguards which restrict the use of or disclosure of information concerning individuals assisted under the State plan to purposes directly connected with (A) the administration of the plan of the State approved under this part, the plan or program of the State under part A, B, C, or D of this title or under title I, V, X, XIV, XVI (as in effect in Puertó Rico, Guam, and the Virgin Islands), XIX, or XX, or the supplemental security income program established by title XVI, (B) any investigation, prosecution, or criminal or civil proceeding, conducted in connection with the administration of any such plan or program, (C) the administration of any other Federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need, and (D) any audit or similar activity conducted in connection with the administration of any such plan or program by any governmental agency which is authorized by law to conduct such audit or activity; and the safeguards so provided shall prohibit disclosure, to any committee or legislative body (other than an agency referred to in clause (D) with respect to an activity referred to in such clause), of any information which identifies by name or address any such applicant or recipient; except that nothing contained herein shall preclude a State from providing standards which restrict disclosures to purposes more limited than those specified herein, or which, in the case of adoptions, prevent disclosure entirely;

(9) provides that where any agency of the State has reason to believe that the home or institution in which a child resides whose care is being paid for in whole or in part with funds provided under this part or part B of this title is unsuitable for the child because of the neglect, abuse, or exploitation of such child, it shall bring such condition to the attention of the appropriate court or law enforcement agency;

(10) provides for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for foster family homes and child care institutions which are reasonably in accord with recommended standards of national organizations concerned with standards for such institutions or homes, including standards related to admission policies, safety, sanitation, and protection of civil rights, and provides that the standards so established shall be applied by the State to any foster family home or child care institution receiving funds under this part or part B of this title;[1]

(11) provides for periodic review of the standards referred to in the preceding paragraph and amounts paid as foster care maintenance payments and adoption assistance payments to assure their continuing appropriateness;

(12) provides for granting an opportunity for a fair hearing before the State agency to any individual whose claim for benefits available pursuant to this part is denied or is not acted upon with reasonable promptness;

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[1]P.L. 97-35, §2353(r) [as amended effective October 1, 1981, by P.L. 97-248, §160(d)], amended paragraph (10) in its entirety, effective October 1, 1981.

(13) provides that the State shall arrange for a periodic and independently conducted audit of the programs assisted under this part and part B of this title, which shall be conducted no less frequently than once every three years;

(14) provides (A) specific goals (which shall be established by State law on or before October 1, 1982) for each fiscal year (commencing with the fiscal year which begins on October 1, 1983) as to the maximum number of children (in absolute numbers or as a percentage of all children in foster care with respect to whom assistance under the plan is provided during such year) who, at any time during such year, will remain in foster care after having been in such care for a period in excess of twenty-four months, and (B) a description of the steps which will be taken by the State to achieve such goals;

(15) effective October 1, 1983, provides that, in each case, reasonable efforts will be made (A) prior to the placement of a child in foster care, to prevent or eliminate the need for removal of the child from his home, and (B) to make it possible for the child to return to his home; and

(16) provides for the development of a case plan (as defined in section 475(1)) for each child receiving foster care maintenance payments under the State plan and provides for a case review system which meets the requirements described in section 475(5)(B) with respect to each such child.[1]

(b) The Secretary shall approve any plan which complies with the provisions of subsection (a) of this section. However, in any case in which the Secretary finds, after reasonable notice and opportunity for a hearing, that a State plan which has been approved by the Secretary no longer complies with the provisions of subsection (a), or that in the administration of the plan there is a substantial failure to comply with the provisions of the plan, the Secretary shall notify the State that further payments will not be made to the State under this part, or that such payments will be made to the State but reduced by an amount which the Secretary determines appropriate, until the Secretary is satisfied that there is no longer any such failure to comply, and until he is so satisfied he shall make no further payments to the State, or shall reduce such payments by the amount specified in his notification to the State.

FOSTER CARE MAINTENANCE PAYMENTS PROGRAM[2]

SEC. 472. [42 U.S.C. 672] (a) Each State with a plan approved under this part shall make foster care maintenance payments (as defined in section 475(4)) under this part with respect to a child who would meet the requirements of section 406(a) or of section 407 but for his removal from the home of a relative (specified in section 406(a)), if—

(1) the removal from the home occurred pursuant to a voluntary placement agreement entered into by the child's parent or legal guardian, or[3] was the result of a judicial determination to

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[1] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §102(e), with respect to the Secretary's report to Congress on the number of children placed in foster care pursuant to certain voluntary placement agreements.

[2] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §102(e), with respect to the Secretary's report to Congress on the number of children placed in foster care pursuant to certain voluntary placement agreements.

[3] P.L. 96-272, §102(a)(1)(A), inserted "occurred pursuant to a voluntary placement agreement

the effect that continuation therein would be contrary to the welfare of such child and (effective October 1, 1983) that reasonable efforts of the type described in section 471(a)(15) have been made;

(2) such child's placement and care are the responsibility of (A) the State agency administering the State plan approved under section 471, or (B) any other public agency with whom the State agency administering or supervising the administration of the State plan approved under section 471 has made an agreement which is still in effect;

(3) such child has been placed in a foster family home or child-care institution as a result of the voluntary placement agreement or judicial[1] determination referred to in paragraph (1); and

(4) such child—

(A) received aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or[2] court proceedings leading to the removal of such child from the home were initiated, or

(B)(i) would have received such aid in or for such month if application had been made therefor, or (ii) had been living with a relative specified in section 406(a) within six months prior to the month in which such agreement was entered into or[3] such proceedings were initiated, and would have received such aid in or for such month if in such month he

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entered into by the child's parent or legal guardian, or", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 98-118, §3(a), effective October 11, 1983, amended that effective date by striking out "1983" and substituting "1984".

P.L. 96-272, §102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984, and that from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472(a)(1) shall read as it would if P.L. 96-272, §102, had not been enacted.

For legislative history comment, see House Conference Report 96-900, pp. 50 and 51, on P.L. 96-272.

[1]P.L. 96-272, §102(a)(1)(B), struck out "a" and substituted "the voluntary placement agreement or judicial", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 98-118, §3(a), effective October 11, 1983, amended that effective date by striking out "1983" and substituting "1984".

P.L. 96-272, §102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984, and that from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472(a)(3) shall read as it would if P.L. 96-272, §102, had not been enacted.

For legistative history comment, see House Conference Report 96-900, pp. 50 and 51, on P.L. 96-272.

[2]P.L. 96-272, §102(a)(1)(C), inserted "such agreement was entered into or", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 98-118, §3(a), effective October 11, 1983, amended that effective date by striking out "1983" and substituting "1984".

P.L. 96-272, §102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984, and that from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472(a)(4)(A) shall read as it would if P.L. 96-272, §102, had not been enacted.

For legislative history comment, see House Conference Report 96-900, pp. 50 and 51, on P.L. 96-272.

[3]P.L. 96-272, §102(a)(1)(D), inserted "such agreement was entered into or", effective with respect to expenditures made after September 30, 1980, and before October 1, 1983.

P.L. 98-118, §3(a), effective October 11, 1983, amended that effective date by striking out "1983" and substituting "1984".

P.L. 96-272, §102(c), provides that that amendment is effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984, and that from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472(a)(4)(B)(ii) shall read as it would if P.L. 96-272, §102, had not been enacted.

For legislative history comment, see House Conference Report 96-900, pp. 50 and 51, on P.L. 96-272.

had been living with such a relative and application therefor had been made.

(b) Foster care maintenance payments may be made under this part only on behalf of a child described in subsection (a) of this section who is—

(1) in the foster family home of an individual, whether the payments therefor are made to such individual or to a public or nonprofit private child-placement or child-care agency, or

(2) in a child-care institution, whether the payments therefor are made to such institution or to a public or nonprofit private child-placement or child-care agency, which payments shall be limited so as to include in such payments only those items which are included in the term "foster care maintenance payments" (as defined in section 475(4)).

(c) For the purposes of this part, (1) the term "foster family home" means a foster family home for children which is licensed by the State in which it is situated or has been approved, by the agency of such State having responsibility for licensing homes of this type, as meeting the standards established for such licensing; and (2) the term "child-care institution" means a nonprofit private child-care institution, or a public child-care institution which accommodates no more than twenty-five children, which is licensed by the State in which it is situated or has been approved, by the agency of such State responsible for licensing or approval of institutions of this type, as meeting the standards established for such licensing, but the term shall not include detention facilities, forestry camps, training schools. or any other facility operated primarily for the detention of children who are determined to be delinquent.

(d) Notwithstanding any other provision of this title, Federal payments may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of children removed from their homes pursuant to voluntary placement agreements as described in subsection (a), only if (at the time such amounts were expended) the State has fulfilled all of the requirements of section 427(b).[1]

(e) No Federal payment may be made under this part with respect to amounts expended by any State as foster care maintenance payments under this section, in the case of any child who was removed from his or her home pursuant to a voluntary placement agreement as described in subsection (a) and has remained in voluntary placement for a period in excess of 180 days, unless there has been a judicial determination by a court of competent jurisdiction (within the first 180 days of such placement) to the effect that such placement is in the best interests of the child.[2]

(f) For the purposes of this part and part B of this title, (1) the term "voluntary placement" means an out-of-home placement of a minor, by or with participation of a State agency, after the parents or guardians of the minor have requested the assistance of the agency

[1]P.L. 96-272, §102(a)(2), added subsection (d), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472 shall read as it would if P.L. 96-272, §102, had not been enacted.

[2]P.L. 96-272, §102(a)(2), added subsection (e), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472 shall read as it would if P.L. 96-272, §102, had not been enacted.

and signed a voluntary placement agreement; and (2) the term "voluntary placement agreement" means a written agreement, binding on the parties to the agreement, between the State agency, any other agency acting on its behalf, and the parents or guardians of a minor child which specifies, at a minimum, the legal status of the child and the rights and obligations of the parents or guardians, the child, and the agency while the child is in placement.[1]

(g) In any case where—

(1) the placement of a minor child in foster care occurred pursuant to a voluntary placement agreement entered into by the parents or guardians of such child as provided in subsection (a), and

(2) such parents or guardians request (in such manner and form as the Secretary may prescribe) that the child be returned to their home or to the home of a relative,

the voluntary placement agreement shall be deemed to be revoked unless the State agency opposes such request and obtains a judicial determination, by a court of competent jurisdiction, that the return of the child to such home would be contrary to the child's best interests.[2]

(h)[3] For purposes of titles XIX and XX, any child with respect to whom foster care maintenance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.[4]

ADOPTION ASSISTANCE PROGRAM[5]

SEC. 473. [42 U.S.C. 673] (a)(1) Each State with a plan approved under this part shall, directly through the State agency or through another public or nonprofit private agency, make adoption assistance payments pursuant to an adoption assistance agreement in amounts determined under paragraph (2) of this subsection to parents who, after the effective date of this section, adopt a child who—

(A)(i) at the time adoption proceedings were initiated, met the requirements of section 406(a) or section 407 or would have met such requirements except for his removal from the home of a relative (specified in section 406(a)), either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403) or[6] as a result of a

[1] P.L. 96-272, §102(a)(2), added subsection (f), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472 shall read as it would if P.L. 96-272, §102, had not been enacted.

[2] P.L. 96-272, §102(a)(2), added subsection (g), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472 shall read as it would if P.L. 96-272, §102, had not been enacted.

[3] P.L. 96-272, §102(a)(2), redesignated this subsection as subsection (h), effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §472 shall read as it would if P.L. 96-272, §102, had not been enacted.

[4] P.L. 96-272, §101(a)(1), added this subsection as subsection "(d)", effective June 17, 1980.

[5] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §101(a)(4)(B), with respect to interstate agreements.

[6] P.L. 96-272, §102(a)(3)(A), inserted ", either pursuant to a voluntary placement agreement with respect to which Federal payments are provided under section 474 (or 403) or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §473(a)(1)(A)(i) shall read as it would if P.L. 96-272, §102, had not been enacted.

judicial determination to the effect that continuation therein would be contrary to the welfare of such child, or

(ii) meets all of the requirements of title XVI with respect to eligibility for supplemental security income benefits,

(B)(i) received aid under the State plan approved under section 402 in or for the month in which such agreement was entered into or[1] court proceedings leading to the removal of such child from the home were initiated, or

(ii)(I) would have received such aid in or for such month if application had been made therefor, or (II) had been living with a relative specified in section 406(a) within six months prior to the month in which such agreement was entered into or[2] such proceedings were initiated, and would have received such aid in or for such month if in such month he had been living with such a relative and application therefor had been made, or

(iii) is a child described in subparagraph (A)(ii), and

(C) has been determined by the State, pursuant to subsection (c) of this section, to be a child with special needs.

(2) The amount of the adoption assistance payments shall be determined through agreement between the adoptive parents and the State or local agency administering the program under this section, which shall take into consideration the circumstances of the adopting parents and the needs of the child being adopted, and may be readjusted periodically, with the concurrence of the adopting parents (which may be specified in the adoption assistance agreement), depending upon changes in such circumstances. However, in no case may the amount of the adoption assistance payment exceed the foster care maintenance payment which would have been paid during the period if the child with respect to whom the adoption assistance payment is made had been in a foster family home.

(3) Notwithstanding the preceding paragraph, (A) no payment may be made to parents with respect to any child who has attained the age of eighteen (or, where the State determines that the child has a mental or physical handicap which warrants the continuation of assistance, the age of twenty-one), and (B) no payment may be made to parents with respect to any child if the State determines that the parents are no longer legally responsible for the support of the child or if the State determines that the child is no longer receiving any support from such parents. Parents who have been receiving adoption assistance payments under this section shall keep the State or local agency administering the program under this section informed of circumstances which would, pursuant to this subsection, make them ineligible for such assistance payments, or eligible for assistance payments in a different amount.

(4) For purposes of this part, individuals with whom a child (who has been determined by the State, pursuant to subsection (c), to be a child with special needs) is placed for adoption, pursuant to an interlocutory decree, shall be eligible for adoption assistance pay-

[1] P.L. 96-272, §102(a)(3)(B), inserted "such agreement was entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §473(a)(1)(B)(i) shall read as it would if P.L. 96-272, §102, had not been enacted.

[2] P.L. 96-272, § 102(a)(3)(C), inserted "such agreement was entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §473(a)(1)(B)(ii) shall read as it would if P.L. 96-272, §102, had not been enacted.

ments under this subsection, during the period of the placement, on the same terms and subject to the same conditions as if such individuals had adopted such child.

(b) For purposes of titles XIX and XX, any child with respect to whom adoption assistance payments are made under this section shall be deemed to be a dependent child as defined in section 406 and shall be deemed to be a recipient of aid to families with dependent children under part A of this title.

(c) For purposes of this section, a child shall not be considered a child with special needs unless—

(1) the State has determined that the child cannot or should not be returned to the home of his parents; and

(2) the State had first determined (A) that there exists with respect to the child a specific factor or condition (such as his ethnic background, age, or membership in a minority or sibling group, or the presence of factors such as medical conditions or physical, mental, or emotional handicaps) because of which it is reasonable to conclude that such child cannot be placed with adoptive parents without providing adoption assistance, and (B) that, except where it would be against the best interests of the child because of such factors as the existence of significant emotional ties with prospective adoptive parents while in the care of such parents as a foster child, a reasonable, but unsuccessful, effort has been made to place the child with appropriate adoptive parents without providing adoption assistance under this section.

PAYMENTS TO STATES; ALLOTMENTS TO STATES

SEC. 474. [42 U.S.C. 674] (a) For each quarter beginning after September 30, 1980, each State which has a plan approved under this part (subject to the limitations imposed by subsection (b)) shall be entitled to a payment equal to the sum of—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as foster care maintenance payments under section 472 for children in foster family homes or child-care institutions; plus

(2) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b) of this Act) of the total amount expended during such quarter as adoption assistance payments under section 473 pursuant to adoption assistance agreements; plus

(3) an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision, and

(B) one-half of the remainder of such expenditures.

(b)(1) Notwithstanding the provisions of subsections (a)(1) and (a)(3), the aggregate of the sums payable thereunder to any State (other than a State subject to limitation under section 1108(a)) with respect to expenditures relating to foster care, for the calendar quarters in any of the fiscal years 1981 through 1984 in which the conditions set forth in paragraph (2) are met, shall not exceed the State's allotment for such year.

(2)(A) The limitation in paragraph (1) shall apply—

(i) with respect to fiscal year 1981, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $163,550,000;

(ii) with respect to fiscal year 1982, only if the amount appropriated under section 420 for such fiscal year is equal to or greater than $220,000,000;

(iii) with respect to fiscal year 1983, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000; and

(iv) with respect to fiscal year 1984, only if the amount appropriated under section 420 for such fiscal year is equal to $266,000,000.

(B) The limitations set forth in paragraph (1) with respect to the fiscal years 1982 through 1984 shall apply only if the required appropriation is made in advance in an appropriation Act (as authorized under section 420(b)) for the fiscal year preceding the fiscal year to which the limitation would apply.

(3) For purposes of this subsection, a State's allotment for any fiscal year shall be the greater of—

(A) the amount determined under paragraph (4);

(B) an amount which bears the same ratio to $100,000,000 as the under age eighteen population of such State bears to the under age eighteen population of the fifty States and the District of Columbia; or

(C) at the option of the State, an amount determined under paragraph (5), but only in the case of a State which meets the requirements of such paragraph (5).

(4) For purposes of paragraph (3)(A), a State's allotment shall be determined as follows:

(A) The allotment for any State for fiscal year 1980 shall be an amount equal to such State's base amount (as determined under subparagraph (c)[1]) increased by 21.2 percent.

(B) The allotment for any State for each of the fiscal years 1981 through 1984 shall be an amount equal to such State's allotment for the preceding fiscal year, increased or decreased by a percentage equal to twice the percentage increase or decrease (as the case may be) (but not to exceed an increase or decrease of 10 percent) in the Consumer Price Index prepared by the Department of Labor, and used in determining cost-of-living adjustments under section 215(i) of this Act, for the second quarter of the preceding fiscal year as compared to such index for the second quarter of the second preceding fiscal year. For purposes of this subparagraph the Consumer Price Index for any

[1] As in original. Probably should be "(C)".

quarter shall be the arithmetical mean of such index for the three months in such quarter.

(C) The base amount shall be equal to the amount of the Federal funds payable to such State for fiscal year 1978 under section 403 on account of expenditures for aid with respect to which Federal financial participation is authorized in payments pursuant to section 408[1] (including administrative expenditures attributable to the provision of such aid as determined by the Secretary) and for those States which in fiscal year 1978 did not make foster care maintenance payments under section 408[2] on behalf of children otherwise eligible for such payment, solely because their foster care was provided by related persons, shall be equal to the total amount of Federal funds the State would have been entitled to be paid under section 403 on account of expenditures pursuant to section 408[3] for that fiscal year if such payments had been made. In the event that there is a dispute between any State and the Secretary as to the amount of such expenditures for such fiscal year, then, until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, the base amount shall be deemed to be the amount of Federal funds which would have been payable under section 403 if the amount of such expenditures were equal to the amount thereof claimed by the State.

(5)(A) For purposes of paragraph (3)(C), a State's allotment for any fiscal year ending after September 30, 1980, and before October 1, 1984, may, at the option of the State (and if the State meets the requirements of subparagraphs (B) and (C)), be determined by application of the provisions of paragraph (4) with the following modifications:

(i) The base amount for purposes of determining an allotment for any such fiscal year shall be equal to the base amount determined under paragraph (4)(C) increased by a percentage equal to the percentage by which the average monthly number of children in such State receiving aid with respect to which Federal financial participation is authorized in payments pursuant to section 408[4], or receiving foster care maintenance payments with respect to which Federal financial participation is authorized under this part, for such fiscal year exceeds the average monthly number of such children for fiscal year 1978.

(ii) For purposes of clause (i), the percentage determined under such clause shall not exceed 33.1 percent in the case of fiscal year 1981, 46.4 percent in the case of fiscal year 1982, 61.1 percent in the case of fiscal year 1983, or 77.2 percent in the case of fiscal year 1984.

(B) No State may exercise the option to have its allotment amount determined under the provisions of this paragraph unless, for fiscal year 1978, the average monthly number of children in such State receiving aid for which Federal financial participation is authorized in payments pursuant to section 408[5] as a percentage of the under age eighteen population of such State, was less than the average such percentage for the fifty States and the District of Columbia.

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[1] P.L. 96-272, §101(a)(2)(A), repealed §408.
[2] P.L. 96-272, §101(a)(2)(A), repealed §408.
[3] P.L. 96-272, §101(a)(2)(A), repealed §408.
[4] P.L. 96-272, §101(a)(2)(A), repealed §408.
[5] P.L. 96-272, §101(a)(2)(A), repealed §408.

(C) No State may exercise the option to have its allotment determined under this paragraph for any fiscal year other than fiscal year 1981 after the first fiscal year (after fiscal year 1978) with respect to which the average monthly number of children in such State receiving aid for which Federal financial participation is authorized in payments pursuant to section 408[1], or receiving foster care maintenance payments for which Federal financial participation is authorized under this part, as a percentage of the under age eighteen population of such State, was equal to or greater than the average such percentage for the fifty States and the District of Columbia for the fiscal year 1978. Any allotment determined under this paragraph for a State which opted to have its allotment so determined under this paragraph for the fiscal year prior to the first fiscal year for which its option may not be exercised by reason of the preceding sentence shall be considered to be such State's allotment for such prior fiscal year for purposes of determining allotments for subsequent fiscal years under paragraph (4).

(D) In determining the number of children receiving aid for which Federal financial participation is authorized in payments under section 408[2] or under this part, for any fiscal year, with respect to any State and with respect to the national average for purposes of subparagraphs (B) and (C), there shall be included those children with respect to whom foster care maintenance payments were not made under section 408[3] or this part (though they were otherwise eligible for such payments) solely because their foster care was provided by related persons. In the event that there is a dispute between any State and the Secretary as to the number of such children (with respect to whom foster care maintenance payments were not made) for any fiscal year, then until the beginning of the fiscal year immediately following the fiscal year in which the dispute is finally resolved, determinations under subparagraphs (B) and (C) shall be made on the basis of the number of such children claimed by the State.

(E) The Secretary shall promulgate an interim allotment amount for purposes of this paragraph for each fiscal year for each State exercising its option to have its allotment determined under this paragraph, based on the most recent satisfactory data available, not later than six months after the beginning of such fiscal year. The amount of such allotment shall be adjusted, and the final allotment amount shall be promulgated, based on the most recent satisfactory data available, not later than nine months after the end of such fiscal year.

(6) Except in the case of a State which loses the option of having its allotment determined under paragraph (5) by reason of the provisions of paragraph (5)(C), and subject to the provisions of such paragraph (5)(C), the amount of any allotment as determined in accordance with subparagraph (A), (B), or (C) of paragraph (3) for any fiscal year for any State shall be determined in accordance with the provisions of such subparagraph, without regard to the amount of such State's allotment for any prior fiscal year as determined in accordance with another such subparagraph.[4]

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[1] P.L. 96-272, §101(a)(2)(A), repealed §408.
[2] P.L. 96-272, §101(a)(2)(A), repealed §408.
[3] P.L. 96-272, §101(a)(2)(A), repealed §408.
[4] See P.L. 96-272, "Adoption Assistance and Child Welfare Act of 1980", §101(a)(2), with respect to the applicability of §408 (repealed) to a State plan approved under part E of this title.

(c)(1) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is in effect, sums available to a State from its allotment under subsection (b) for carrying out this part, which the State does not claim as reimbursement for expenditures in such year pursuant to subsection (a) of this section, may be claimed by the State as reimbursement for expenditures in such year pursuant to part B of this title, in addition to sums available pursuant to section 420 for carrying out part B.

(2) Except as provided in paragraphs (3) and (4), for any of the fiscal years 1981 through 1984 during which the limitation under subsection (b)(1) is not in effect, a State may claim as reimbursement for expenditures for such year pursuant to part B of this title, in addition to amounts claimed under section 420, an amount equal to the amount by which the State's allotment amount for such fiscal year (as determined under subsection (b)(3)) exceeds the amount claimed by such State for such fiscal year as reimbursement for expenses relating to foster care under subsection (a); except that the total amount claimed by such State for such fiscal year under this paragraph, when added to the amount that such State receives for such fiscal year under section 420, may not exceed the amount that would have been payable to such State under section 420 for such fiscal year if the relvant[1] amount described in subsection (b)(2)(A) had been appropriated for such fiscal year.

(3) The provisions of paragraphs (1) and (2) shall not apply for any fiscal year with respect to any State which, with respect to such fiscal year, exercised its option to have its allotment amount determined under subsection (b)(5).

(4)(A) No State may claim an amount under the provisions of this subsection as reimbursement for expenditures for any fiscal year pursuant to part B of this title to the extent that such amount, plus the amount claimed by such State for such fiscal year under section 420, exceeds the amount which would be allotted to such State under part B if the amount appropriated under section 420 were $141,000,000, unless such State has met the requirements set forth in section 427(a).

(B) If, for each of any two consecutive fiscal years, there is appropriated under section 420 a sum equal to $266,000,000, no State may claim any amount under the provisions of this subsection as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

(C) If, for each of any two fiscal years during which the limitation under subsection (b)(1) is not in effect, the total amount claimed by a State as reimbursement for expenditures pursuant to part B under this subsection and under section 420 equals the amount which would be allotted to such State for such fiscal year under part B if the amount appropriated under section 420 were $266,000,000, such State may not claim any amount under the provisions of paragraph (2) as reimbursement for expenditures for any succeeding fiscal year pursuant to part B of this title unless such State has met the requirements set forth in section 427(b).

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[1] As in original. Should be "relevant".

(d)(1) The Secretary shall, prior to the beginning of each quarter, estimate the amount to which a State will be entitled under subsections (a), (b), and (c) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of children in the State receiving assistance under this part, and (c)[1] such other investigation as the secretary[2] may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to foster care and adoption assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

DEFINITIONS

SEC. 475. [42 U.S.C. 675] As used in this part or part B of this title:

(1) The term "case plan" means a written document which includes at least the following: A description of the type of home or institution in which a child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to carry out the voluntary placement agreement entered into or[3] judicial determination made with respect to the child in accordance with section 472(a)(1); and a plan for assuring that the child receives proper care and that services are provided to the parents, child, and foster parents in order to improve the conditions in the parents' home, facilitate return of the child to his own home or the permanent placement of the child, and address the needs of the child while in foster care, including a discussion of the appropriateness of the services that have been provided to the child under the plan.

(2) The term "parents" means biological or adoptive parents or legal guardians, as determined by applicable State law.

(3) The term "adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the State agency, other relevant agencies, and the prospective adop-

[1] As in original. Probably should be "(C)".
[2] As in original. Should be "Secretary".
[3] P.L. 96-272, §102(a)(4), inserted "voluntary placement agreement entered into or", effective only with respect to expenditures made after September 30, 1979, and before October 1, 1984; and from and after October 1, 1984 [as amended by P.L. 98-118, §3(b), effective October 11, 1983], §475(1) shall read as if P.L. 96-272, §102, had not been enacted.

tive parents of a minor child which at a minimum (A) specifies the amounts of the adoption assistance payments and any additional services and assistance which are to be provided as part of such agreement, and (B) stipulates that the agreement shall remain in effect regardless of the State of which the adoptive parents are residents at any given time.[1] The agreement shall contain provisions for the protection (under an interstate compact approved by the Secretary or otherwise) of the interests of the child in cases where the adoptive parents and child move to another State while the agreement is effective.

(4) The term "foster care maintenance payments" means payments to cover the cost of (and the cost of providing) food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to a child, and reasonable travel to the child's home for visitation. In the case of institutional care, such term shall include the reasonable costs of administration and operation of such institution as are necessarily required to provide the items described in the preceding sentence.

(5) The term "case review system" means a procedure for assuring that—

(A) each child has a case plan designed to achieve placement in the least restrictive (most family like) setting available and in close proximity to the parents' home, consistent with the best interest and special needs of the child,

(B) the status of each child is reviewed periodically but no less frequently than once every six months by either a court or by a ministrative review (as defined in paragraph (6)) in order to determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress which has been made toward alleviating or mitigating the causes necessitating placement in foster care, and to project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship, and

(C) with respect to each such child, procedural safeguards will be applied, among other things, to assure each child in foster care under the supervision of the State of a dispositional hearing to be held, in a family or juvenile court or another court (including a tribal court) of competent jurisdiction, or by an administrative body appointed or approved by the court, no later than eighteen months after the original placement (and periodically thereafter during the continuation of foster care), which hearing shall determine the future status of the child (including, but not limited to, whether the child should be returned to the parent, should be continued in foster care for a specified period, should be placed for adoption, or should (because of the child's special needs or circumstances) be continued in foster care on a permanent or long-term basis); and procedural safeguards shall also be applied with respect to parental rights per-

[1] P.L. 96-272, §101(a)(4)(A), provides that this clause (B) shall be effective with respect to adoption assistance agreements entered into on or after October 1, 1983.

taining to the removal of the child from the home of his parents, to a change in the child's placement, and to any determination affecting visitation privileges of parents.

(6) The term "administrative review" means a review open to the participation of the parents of the child, conducted by a panel of appropriate persons at least one of whom is not responsible for the case management of, or the delivery of services to, either the child or the parents who are the subject of the review.

TECHNICAL ASSISTANCE; DATA COLLECTION AND EVALUATION

SEC. 476. [42 U.S.C. 676] (a) The Secretary may provide technical assistance to the States to assist them to develop the programs authorized under this part and shall periodically (1) evaluate the programs authorized under this part and part B of this title and (2) collect and publish data pertaining to the incidence and characteristics of foster care and adoptions in this country.

(b) Each State shall submit statistical reports as the Secretary may require with respect to children for whom payments are made under this part containing information with respect to such children including legal status, demographic characteristics, location, and length of any stay in foster care.

TITLE V—MATERNAL AND CHILD HEALTH SERVICES BLOCK GRANT[1]

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AUTHORIZATION OF APPROPRIATIONS[3]

SEC. 501. [42 U.S.C. 701] (a) For the purpose of enabling each State—

(1) to assure mothers and children (in particular those with low income or with limited availability of health services) access to quality maternal and child health services,

(2) to reduce infant mortality and the incidence of preventable diseases and handicapping conditions among children, to reduce the need for inpatient and long-term care services, to increase the number of children (especially preschool children) appropriately immunized against disease and the number of low income children receiving health assessments and follow-up diagnostic and treatment services, and otherwise to promote the health of mothers and children (especially by providing preventive and primary care services for low income children, and prenatal, delivery, and postpartum care for low income mothers),

(3) to provide rehabilitation services for blind and disabled individuals under the age of 16 receiving benefits under title XVI of this Act, and

(4) to provide services for locating, and for medical, surgical, corrective, and other services, and care for, and facilities for

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[1]Title V of the Social Security Act is administered by the Health Resources and Services Administration, Public Health Service, Department of Health and Human Services.

Title V appears in the United States Code as §§701-709, subchapter V, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title V are contained in chapter I, Title 42, and in subtitle A, Title 45, Code of Federal Regulations.

P.L. 97-248, §137(c)(2), amended P.L. 96-499, "Omnibus Reconciliation Act of 1980", §914(c)(2), which was the effective date for amendments to Title V made by P.L. 96-499, §914(c)(1).

P.L. 97-35, §2192(a), amended Title V in its entirety. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[2]This table of contents does not appear in the law.

[3]P.L. 97-35, §2193(a)(3), amended the prior §501. For the effective date, see P.L. 97-35. "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

diagnosis, hospitalization, and aftercare for, children who are crippled or who are suffering from conditions leading to crippling;

and for the purpose of enabling the Secretary to provide for special projects of regional and national significance, research, and training with respect to maternal and child health and crippled children, for *genetic disease testing, counseling, and information development and* dissemination programs, and for grants relating to hemophilia (without regard to age), there are authorized to be appropriated $373,000,000 for fiscal year 1982 and for each fiscal year thereafter.

(b) For purposes of this title:

(1) The term "consolidated health programs" means the programs administered under the provisions of—

(A) this title (relating to maternal and child health and crippled children's services),

(B) section 1615(c) of this Act (relating to supplemental security income for disabled children),

(C) sections 316 (relating to lead-based paint poisoning prevention programs), 1101 (relating to genetic disease programs), 1121 (relating to sudden infant death syndrome programs) and 1131 (relating to hemophilia treatment centers) of the Public Health Service Act[1], and

(D) title VI[2] of the Health Services and Centers Amendments of 1978 (Public Law 95-626; relating to adolescent pregnancy grants),

as such provisions were in effect before the date of the enactment of the Maternal and Child Health Services Block Grant Act[3].

(2) The term "low income" means, with respect to an individual or family, such an individual or family with an income determined to be below the nonfarm income official poverty line defined by the Office of Management and Budget and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981[4].

ALLOTMENTS TO STATES AND FEDERAL SET-ASIDE

SEC. 502. [42 U.S.C. 702] (a)(1) Of the amount appropriated under section 501(a), the Secretary shall retain an amount equal to 15 percent thereof in the case of fiscal year 1982, and an amount equal to not less than 10, nor more than 15, percent thereof in the case of each fiscal year thereafter, for the purpose of carrying out (through grants, contracts, or otherwise) special projects of regional and national significance, training, and research and for the funding of genetic disease testing, counseling, and information development and dissemination programs and of comprehensive hemophilia diagnostic and treatment centers. The authority of the Secretary to enter into

[1] P.L. 78-410.

[2] P.L. 97-248, §137(b)(1), struck out "IV" and substituted "VI", effective as if it had been originally included in that provision by P.L. 97-35.

P.L. 95-626, title VI, was repealed by P.L. 97-35, §955(b); 95 Stat. 592.

[3] P.L. 97-35, Title XXI, Subtitle D [95 Stat. 818].

[4] P.L. 97-35.

P.L. 97-248, §137(b)(2), struck out "624 of the Economic Opportunity Act of 1964" and substituted "673(2) of the Omnibus Budget Reconciliation Act of 1981", effective as if it had been originally included in that provision by P.L. 97-35.

any contracts under this title is effective for any fiscal year only to such extent or in such amounts as are provided in appropriations Acts.

(2) For purposes of paragraph (1)—

(A) amounts retained by the Secretary for training shall be used to make grants to public or nonprofit private institutions of higher learning for training personnel for health care and related services for mothers and children; and

(B) amounts retained by the Secretary for research shall be used to make grants to, contracts with, or jointly financed cooperative agreements with, public or nonprofit institutions of higher learning and public or nonprofit private agencies and organizations engaged in research or in maternal and child health or crippled children's programs for research projects relating to maternal and child health services or crippled children's services which show promise of substantial contribution to the advancement thereof.

(3) No funds may be made available by the Secretary under this subsection unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, be submitted in such manner, and contain and be accompanied by such information as the Secretary may specify. No such application may be approved unless it contains assurances that the applicant will use the funds provided only for the purposes specified in the approved application and will establish such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement and accounting of Federal funds paid to the applicant under this title.

(b) From the remaining amounts appropriated under section 501(a) for any fiscal year, the Secretary shall allot to each State which has transmitted a description of intended activities and statement of assurances for the fiscal year under section 505, an amount determined as follows:

(1) The Secretary shall determine, for each State—

(A)(i) the amount provided or allotted by the Secretary to the State and to entities in the State under the provisions of the consolidated health programs (as defined in section 501(b)(1)), other than for any of the projects or programs described in subsection (a), from appropriations for fiscal year 1981,

(ii) the proportion that such amount for that State bears to the total of such amounts for all the States, and

(B)(i) the number of low income children in the State, and

(ii) the proportion that such number of children for that State bears to the total of such numbers of children for all the States.

(2)(A) For each of fiscal years 1982 and 1983, each such State shall be allotted for that fiscal year an amount equal to the State's proportion (determined under paragraph (1)(A)(ii)) of the amounts available for allotment to all the States under this subsection for that fiscal year.

(B) For fiscal years beginning with fiscal year 1984, if the amount available for allotment under this subsection for that fiscal year—

(i) does not exceed the amount available under this subsection for allotment for fiscal year 1983, each such State shall be allotted for that fiscal year an amount equal to the State's proportion (determined under paragraph (1)(A)(ii)) of the amounts available for allotment to all the States under this subsection for that fiscal year, or

(ii) exceeds the amounts available under this subsection for allotment for fiscal year 1983, each such State shall be allotted for that fiscal year an amount equal to the sum of—

(I) the amount of the allotment to the State under this subsection in fiscal year 1983 (without regard to paragraph (3) of this subsection), and

(II) the State's proportion (determined under paragraph (1)(B)(ii)) of the amount by which the allotment available under this subsection for all the States for that fiscal year exceeds the amount that was available under this subsection for allotment for all the States for fiscal year 1983.

(3)(A) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States either because all the States have not qualified for such allotments under section 505 for the fiscal year or because some States have indicated in their descriptions of activities under section 505 that they do not intend to use the full amount of such allotments, such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

(B) To the extent that all the funds appropriated under this title for a fiscal year are not otherwise allotted to States because some State allotments are offset under section 506(b)(2), such excess shall be allotted among the remaining States in proportion to the amount otherwise allotted to such States for the fiscal year without regard to this subparagraph.

PAYMENTS TO STATES

SEC. 503. [42 U.S.C. 703] (a) From the sums appropriated therefor and the allotments available under section 502(b), the Secretary shall make payments as provided by section 203 of the Intergovernmental Cooperation Act of 1968[1] (42 U.S.C. 4213) to each State provided such an allotment under section 502(b), for each quarter, of an amount equal to four-sevenths of the total of the sums expended by the State during such quarter in carrying out the provisions of this title.

(b) Any amount payable to a State under this title from allotments for a fiscal year which remains unobligated at the end of such year shall remain available to such State for obligation during the next fiscal year. No payment may be made to a State under this title from allotments for a fiscal year for expenditures made after the following fiscal year.

(c) The Secretary, at the request of a State, may reduce the amount of payments under subsection (a) by—

(1) the fair market value of any supplies or equipment furnished the State, and

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[1] P.L. 90-577.
P.L. 97-258, §5(b), [96 Stat. 1068, 1080], repealed P.L. 90-577. See, instead, 31 U.S.C. 6504-6505.

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of supplies or equipment or the detail of an officer or employee is for the convenience of and at the request of the State and for the purpose of conducting activities described in section 505 on a temporary basis. The amount by which any payment is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment or in detailing the personnel, on which the reduction of the payment is based, and the amount shall be deemed to be part of the payment and shall be deemed to have been paid to the State.

USE OF ALLOTMENT FUNDS

SEC. 504. [42 U.S.C. 704] (a) Except as otherwise provided under this section, a State may use amounts paid to it under section 503 for the provision of health services and related activities (including planning, administration, education, and evaluation) consistent with its description of intended expenditures and statement of assurances transmitted under section 505.

(b) Amounts described in subsection (a) may not be used for—

(1) inpatient services, other than inpatient services provided to crippled children or to high-risk pregnant women and infants and such other inpatient services as the Secretary may approve;

(2) cash payments to intended recipients of health services;

(3) the purchase or improvement of land, the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility, or the purchase of major medical equipment;

(4) satisfying any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

(5) providing funds for research or training to any entity other than a public or nonprofit private entity.

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this title.

(c) A State may use a portion of the amounts described in subsection (a) for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance is required in developing, implementing, and administering programs funded under this title.

DESCRIPTION OF INTENDED EXPENDITURES AND STATEMENT OF ASSURANCES

SEC. 505. [42 U.S.C. 705] In order to be entitled to payments for allotments under section 502 for a fiscal year, a State must prepare and transmit to the Secretary—

(1) a report describing the intended use of payments the State is to receive under this title for the fiscal year, including (A) a description of those populations, areas, and localities in the State which the State has identified as needing maternal and child

health services, (B) a statement of goals and objectives for meeting those needs, (C) information on the types of services to be provided and the categories or characteristics of individuals to be served, and (D) data the State intends to collect respecting activities conducted with such payments; and

(2) a statement of assurances that represents to the Secretary that—

(A) the State will provide a fair method (as determined by the State) for allocating funds allotted to the State under this title among such individuals, areas, and localities identified under paragraph (1)(A) as needing maternal and child health services, and the State will identify and apply guidelines for the appropriate frequency and content of, and appropriate referral and followup with respect to, health care assessments and services financially assisted by the State under this title and methods for assuring quality assessments and services;

(B) funds allotted to the State under this title will only be used, consistent with section 508, to carry out the purposes of this title or to continue activities previously conducted under the consolidated health programs (described in section 501(b)(1)[1]);

(C) the State will use—

(i) a substantial proportion of the sums expended by the State for carrying out this title for the provision of health services to mothers and children, with special consideration given (where appropriate) to the continuation of the funding of special projects in the State previously funded under this title (as in effect before the date of the enactment of the Maternal and Child Health Services Block Grant Act[2]), and

(ii) a reasonable proportion (based upon the State's previous use of funds under this title) of such sums to carry out the purposes described in paragraphs (1) through (3) of section 501(a);

(D) if any charges are imposed[3] for the provision of health services assisted by the State under this title, such charges (i) will be pursuant to a public schedule of charges, (ii) will not be imposed with respect to services provided to low income mothers or children, and (iii) will be adjusted to reflect the income, resources, and family size of the individual provided the services; and

(E) the State agency (or agencies) administering the State's program under this title will participate—

(i) in the coordination of activities between such program and the early and periodic screening, diagnosis, and treatment program under title XIX, to ensure that such programs are carried out without duplication of effort,

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[1]P.L. 97-248, §137(b)(3), struck out "502(b)(1)" and substituted "501(b)(1)", effective as if it had been originally included in that provision by P.L. 97-35.

[2]P.L. 97-35, Title XXI, Subtitle D [95 Stat. 818].

[3]P.L. 97-248, §137(b)(4), struck out "the State imposes any charges" and substituted "any charges are imposed", effective as if it had been originally included in that provision by P.L. 97-35.

(ii) in the arrangement and carrying out of coordination agreements described in section 1902(a)(11) (relating to coordination of care and services available under this title and title XIX), and

(iii) in the coordination of activities within the State with programs carried out under this title and related Federal grant programs (including supplemental food programs for mothers, infants, and children, related education programs, and other health, developmental disability, and family planning programs).

The description and statement shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and statement and after its transmittal. The description and statement shall be revised (consistent with this section) throughout the year as may be necessary to reflect substantial changes in any element of such description or statement, and any revision shall be subject to the requirements of the preceding sentence.

REPORTS AND AUDITS

SEC. 506. [42 U.S.C. 706] (a)(1) Each State shall prepare and submit to the Secretary annual reports on its activities under this title. In order properly to evaluate and to compare the performance of different States assisted under this title and to assure the proper expenditure of funds under this title, such reports shall be in such form and contain such information as the Secretary determines (after consultation with the States and the Comptroller General) to be necessary (A) to secure an accurate description of those activities, (B) to secure a complete record of the purposes for which funds were spent, of the recipients of such funds, and of the progress made toward achieving the purposes of this title, and (C) to determine the extent to which funds were expended consistent with the State's description and statement transmitted under section 505. Copies of the report shall be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(2) The Secretary shall annually report to the Congress on activities funded under section 502(a) and shall provide for transmittal of a copy of such report to each State.

(b)(1) Each State shall, not less often than once every two years, audit its expenditures from amounts received under this title. Such State audits shall be conducted by an entity independent of the State agency administering a program funded under this title in accordance with the Comptroller General's standards for auditing governmental organizations, programs, activities, and functions and generally accepted auditing standards. Within 30 days following the completion of each audit report, the State shall submit a copy of that audit report to the Secretary.

(2) Each State shall repay to the United States amounts found by the Secretary, after notice and opportunity for a hearing to the State, not to have been expended in accordance with this title and, if such repayment is not made, the Secretary may offset such amounts against the amount of any allotment to which the State is or may become entitled under this title or may otherwise recover such amounts.

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(3) The Secretary may, after notice and opportunity for a hearing, withhold payment of funds to any State which is not using its allotment under this title in accordance with this title. The Secretary may withhold such funds until the Secretary finds that the reason for the withholding has been removed and there is reasonable assurance that it will not recur.

(c) The State shall make copies of the reports and audits required by this section available for public inspection within the State.

(d)(1) For the purpose of evaluating and reviewing the block grant established under this title, the Secretary and the Comptroller General shall have access to any books, accounts, records, correspondence, or other documents that are related to such block grant, and that are in the possession, custody, or control of States, political subdivisions thereof, or any of their grantees.

(2) In conjunction with an evaluation or review under paragraph (1), no State or political subdivision thereof (or grantee of either) shall be required to create or prepare new records to comply with paragraph (1).

(3) For other provisions relating to deposit, accounting, reports, and auditing with respect to Federal grants to States, see section 202 of the Intergovernmental Cooperation Act of 1968[1] (42 U.S.C. 4212).

CRIMINAL PENALTY FOR FALSE STATEMENTS

SEC. 507. [42 U.S.C. 707] (a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in connection with the furnishing of items or services for which payment may be made by a State from funds allotted to the State under this title, or

(2) having knowledge of the occurrence of any event affecting his initial or continued right to any such payment conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount than is due or when no such payment is authorized,

shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(b) For civil monetary penalties for certain submissions of false claims, see section 1128A of this Act.

NONDISCRIMINATION

SEC. 508. [42 U.S.C. 708] (a)(1) For the purpose of applying the prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975[2], on the basis of handicap under section 504 of the Rehabilitation Act of 1973[3], on the basis of sex under title IX of the Education Amendments of 1972[4], or on the basis of race, color, or national origin under title VI of the Civil Rights Act of 1964[5], programs and activities funded in whole or in part with funds made available under this title are considered to be programs and activities receiving Federal financial assistance.

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[1] P.L. 90-577.
P.L. 97-258, §5(b) [96 Stat. 1068, 1080], repealed P.L. 90-577. See, instead, 31 U.S.C. 6504-6505.
[2] P.L. 94-135, Title III [89 Stat. 728].
[3] P.L. 93-112.
[4] P.L. 92-318.
[5] P.L. 88-352.

(2) No person shall on the ground of sex or religion be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity funded in whole or in part with funds made available under this title.

(b) Whenever the Secretary finds that a State, or an entity that has received a payment from an allotment to a State under section 502(b), has failed to comply with a provision of law referred to in subsection (a)(1), with subsection (a)(2), or with an applicable regulation (including one prescribed to carry out subsection (a)(2)), he shall notify the chief executive officer of the State and shall request him to secure compliance. If within a reasonable period of time, not to exceed sixty days, the chief executive officer fails or refuses to secure compliance, the Secretary may—

(1) refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted,

(2) exercise the powers and functions provided by title VI of the Civil Rights Act of 1964[1], the Age Discrimination Act of 1975[2], or section 504 of the Rehabilitation Act of 1973[3], as may be applicable, or

(3) take such other action as may be provided by law.

(c) When a matter is referred to the Attorney General pursuant to subsection (b)(1), or whenever he has reason to believe that the entity is engaged in a pattern or practice in violation of a provision of law referred to in subsection (a)(1) or in violation of subsection (a)(2), the Attorney General may bring a civil action in any appropriate district court of the United States for such relief as may be appropriate, including injunctive relief.

ADMINISTRATION OF TITLE AND STATE PROGRAMS

SEC. 509. [42 U.S.C. 709] (a) The Secretary shall designate an identifiable administrative unit with expertise in maternal and child health within the Department of Health and Human Services, which unit shall be responsible for—

(1) the Federal program described in section 502(a);

(2) promoting coordination at the Federal level of the activities authorized under this title and under title XIX of this Act, especially early and periodic screening, diagnosis and treatment, related activities funded by the Departments of Agriculture and Education, and under health block grants and categorical health programs, such as immunizations, administered by the Secretary;

(3) disseminating information to the States in such areas as preventive health services and advances in the care and treatment of mothers and children;

(4) providing technical assistance, upon request, to the States in such areas as program planning, establishment of goals and objectives, standards of care, and evaluation;

(5) in cooperation with the National Center for Health Statistics and in a manner that avoids duplication of data collection, collection, maintenance, and dissemination of information relating to the health status and health service needs of mothers and children in the United States; and

[1] P.L. 88-352.
[2] P.L. 94-135, Title III [89 Stat. 728].
[3] P.L. 93-112.

(6) assisting in the preparation of reports to the Congress on the activities funded and accomplishments achieved under this title from the information required to be reported by the States under sections 505 and 506.

(b) The State health agency of each State shall be responsible for the administration (or supervision of the administration) of programs carried out with allotments made to the State under this title, except that, in the case of a State which on July 1, 1967, provided for administration (or supervision thereof) of the State plan under this title (as in effect on such date) by a State agency other than the State health agency, that State shall be considered to comply[1] the requirement of this subsection if it would otherwise comply but for the fact that such other State agency administers (or supervises the administration of) any such program providing services for crippled children.

[1] As in original.

[TITLE VI—GRANTS TO STATES FOR SERVICES TO THE AGED, BLIND, OR DISABLED][1]

[1]P.L. 92-603, §302, 86 Stat. 1478, added Title VI, effective January 1, 1974.
P.L. 93-647, §3(b), 88 Stat. 2349, repealed Title VI, effective with respect to payments under §603 of this Act for quarters commencing after September 30, 1975.

[Social Security Act §§1115(a), (a)(1), (a)(2); 1116(a)(1), (a)(3), (b), (d); and 1902(a)(20)(C) contain references to Title VI.]

TITLE VII—ADMINISTRATION[1]

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OFFICE OF COMMISSIONER FOR SOCIAL SECURITY[3]

SECTION 701. [42 U.S.C. 901] There shall be in the Federal Security Agency a Commissioner for Social Security, appointed by the Administrator, who shall perform such functions relating to social security as the Administrator shall assign to him.

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[1]Title VII of the Social Security Act is administered by the Office of the Secretary, Office of Commissioner for Social Security, and Department of Health and Human Services.

Title VII appears in the United States Code as §§901-911 of subchapter VII, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services (formerly Secretary of Health, Education, and Welfare) relating to Title VII are contained in subtitle A and chapter II, Title 45, Code of Federal Regulations.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 95-216, "Social Security Amendments of 1977", §361, with respect to establishment of a National Commission on Social Security.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency.

[2]This table of contents does not appear in the law.

[3]Reorganization Plan No. 1 of 1953, §8, effective April 11, 1953 (18 F.R. 2053; 67 Stat. 631), abolished the office of Commissioner for Social Security in the Federal Security Agency. That reorganization plan, in §4, established the position of Commissioner of Social Security in the Department of Health, Education, and Welfare.

DUTIES OF SOCIAL SECURITY BOARD[1]

SEC. 702. [42 U.S.C. 902] The Administrator shall perform the duties imposed upon him by this Act and shall also have the duty of studying and making recommendations as to the most effective methods of providing economic security through social insurance, and as to legislation and matters of administrative policy concerning old-age pensions, unemployment compensation, accident compensation, and related subjects.

EXPENSES OF THE BOARD[2]

SEC. 703. [42 U.S.C. 903] The Administrator is authorized to appoint and fix the compensation of such officers and employees, and to make such expenditures, as may be necessary for carrying out his functions under this Act. Appointments of attorneys and experts may be made without regard to the civil-service laws.

REPORTS

SEC. 704. [42 U.S.C. 904] The Secretary shall make a full report to Congress, within one hundred and twenty days after the beginning of each regular session, of the administration of the functions with which he is charged under this Act. In addition to the number of copies of such report authorized by other law to be printed, there is hereby authorized to be printed not more than five thousand copies of such report for use by the Secretary for distribution to Members of Congress and to State and other public or private agencies or organizations participating in or concerned with the social security program.

TRAINING GRANTS FOR PUBLIC WELFARE PERSONNEL

SEC. 705. [42 U.S.C. 906] (a) In order to assist in increasing the effectiveness and efficiency of administration of public assistance programs by increasing the number of adequately trained public welfare personnel available for work in public assistance programs, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1963, the sum of $3,500,000, and for each fiscal year thereafter the sum of $5,000,000.

(b) Such portion of the sums appropriated pursuant to subsection (a) for any fiscal year as the Secretary may determine, but not in excess of $1,000,000 in the case of the fiscal year ending June 30, 1963, and $2,000,000 in the case of any fiscal year thereafter, shall be available for carrying out subsection (f). From the remainder of the

[1] P.L. 74-271, §702; 49 Stat. 636.
P.L. 74-271, "Social Security Act", §702, effective August 14, 1935, imposed these duties on the Social Security Board.
Reorganization Plan No. 2 of 1949 transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which also was transferred to the Department of Labor from the Federal Security Agency). Reorganization Plan No. 19 of 1950 transferred the Bureau of Employees' Compensation from the Federal Security Agency (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section of the Social Security Act also apply to the Secretary of Labor.
[2] P.L. 74-271, §703; 49 Stat. 636.

sums so appropriated for any fiscal year, the Secretary shall make allotments to the States on the basis of (1) population, (2) relative need for trained public welfare personnel, particularly for personnel to provide self-support and self-care services, and (3) financial need.

(c) From each State's allotment under subsection (b), the Secretary shall from time to time pay to such State its costs of carrying out the purposes of this section through (1) grants to public or other nonprofit institutions of higher learning for training personnel employed or preparing for employment in public assistance programs, (2) special courses of study or seminars of short duration conducted for such personnel by experts hired on a temporary basis for the purpose, and (3) establishing and maintaining, directly or through grants to such institutions, fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted under regulations of the Secretary.

(d) Payments pursuant to subsection (c) shall be made in advance on the basis of estimates by the Secretary and adjustments may be made in future payments under this section to take account of overpayments or underpayments in amounts previously paid.

(e) The amount of any allotment to a State under subsection (b) for any fiscal year which the State certifies to the Secretary will not be required for carrying out the purposes of this section in such State shall be available for reallotment from time to time, on such dates as the Secretary may fix, to other States which the Secretary determines have need in carrying out such purposes for sums in excess of those previously allotted to them under this section and will be able to use such excess amounts during such fiscal year; such reallotments to be made on the basis provided in subsection (b) for the initial allotments to the States. Any amount so reallotted to a State shall be deemed part of its allotment under such subsection.

(f)(1) The portion of the sums appropriated for any fiscal year which is determined by the Secretary under the first sentence of subsection (b) to be available for carrying out this subsection shall be available to enable him to provide (A) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for training personnel who are employed or preparing for employment in the administration of public assistance programs, (B) directly or through grants to or contracts with public or nonprofit private agencies or institutions, for special courses of study or seminars of short duration (not in excess of one year) for training of such personnel, and (C) directly or through grants to or contracts with public or nonprofit private institutions of higher learning, for establishing and maintaining fellowships or traineeships for such personnel at such institutions, with such stipends and allowances as may be permitted by the Secretary.

(2) Payments under paragraph (1) may be made in advance on the basis of estimates by the Secretary, or may be made by way of reimbursement, and adjustments may be made in future payments under this subsection to take account of overpayments or underpayments in amounts previously paid.

(3) The Secretary may, to the extent he finds such action to be necessary, prescribe requirements to assure that any individual will repay the amount of his fellowship or traineeship received under this subsection to the extent such individual fails to serve, for the period

prescribed by the Secretary, with a State or political subdivision thereof, or with the Federal Government, in connection with administration of any State or local public assistance program. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that requirement of such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the public welfare programs established by this Act.

ADVISORY COUNCIL ON SOCIAL SECURITY[1]

SEC. 706. [42 U.S.C. 907] (a) During 1969 (but not before February 1, 1969) and every fourth year thereafter (but not before February 1 of such fourth year), the Secretary shall appoint an Advisory Council on Social Security for the purpose of reviewing the status of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund in relation to the long-term commitments of the old-age, survivors, and disability insurance program and the programs under parts A and B of title XVIII, and of reviewing the scope of coverage and the adequacy of benefits under, and all other aspects of, these programs, including their impact on the public assistance programs under this Act.

(b) Each such Council shall consist of a Chairman and 12 other persons, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service. The appointed members shall, to the extent possible, represent organizations of employers and employees in equal numbers and represent self-employed persons and the public.

(c)(1) Any Council appointed hereunder is authorized to engage such technical assistance, including actuarial services, as may be required to carry out its functions, and the Secretary shall, in addition, make available to such Council such secretarial, clerical, and other assistance and such actuarial and other pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(2) Appointed members of any such Council, while serving on business of the Council (inclusive of travel time) shall receive compensation at rates fixed by the Secretary, but not exceeding $100 per day and, while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.

(d) Each such Council shall submit reports (including any interim reports such Council may have issued) of its findings and recommendations to the Secretary not later than January 1 of the second year after the year in which it is appointed, and such reports and recommendations shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds. The reports required by this subsection shall include—

[1]See P.L. 92-463, "Federal Advisory Committee Act", §§2-15, with respect to provisions governing the operation of advisory committees.

(1) a separate report with respect to the old-age, survivors, and disability insurance program under title II and of the taxes imposed under sections 1401(a), 3101(a), and 3111(a) of the Internal Revenue Code of 1954[1],

(2) a separate report with respect to the hospital insurance program under part A of title XVIII and of the taxes imposed by sections 1401(b), 3101(b), and 3111(b) of the Internal Revenue Code of 1954[2], and

(3) a separate report with respect to the supplementary medical insurance program established by part B of title XVIII and of the financing thereof.

After the date of the transmittal to the Congress of the reports required by this subsection, the Council shall cease to exist.[3]

GRANTS FOR EXPANSION AND DEVELOPMENT OF UNDERGRADUATE AND GRADUATE PROGRAMS

SEC. 707. [42 U.S.C. 908] (a) There is authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1969, and $5,000,000 for each of the three succeeding fiscal years, for grants by the Secretary to public or nonprofit private colleges and universities and to accredited graduate schools of social work or an association of such schools to meet part of the costs of development, expansion, or improvement of (respectively) undergraduate programs in social work and programs for the graduate training of professional social work personnel, including the costs of compensation of additional faculty and administrative personnel and minor improvements of existing facilities. Not less than one-half of the sums appropriated for any fiscal year under the authority of this subsection shall be used by the Secretary for grants with respect to undergraduate programs.

(b) In considering applications for grants under this section, the Secretary shall take into account the relative need in the States for personnel trained in social work and the effect of the grants thereon.

(c) Payment of grants under this section may be made (after necessary adjustments on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and on such terms and conditions and in such installments, as the Secretary may determine.

(d) For purposes of this section—

(1) the term "graduate school of social work" means a department, school, division, or other administrative unit, in a public or nonprofit private college or university, which provides, primarily or exclusively, a program of education in social work and allied subjects leading to a graduate degree in social work;

(2) the term "accredited" as applied to a graduate school of social work refers to a school which is accredited by a body or bodies approved for the purpose by the Commissioner of Education or with respect to which there is evidence satisfactory to the Secretary that it will be so accredited within a reasonable time; and

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[1] See P.L. 83-591, "Internal Revenue Code of 1954", §1401(a), p. 803.

[2] See P.L. 83-591, "Internal Revenue Code of 1954", §1401(b), p. 803.

[3] See P.L. 95-216, "Social Security Amendments of 1977", §361, with respect to establishment of the National Commission on Social Security.

(3) the term "nonprofit" as applied to any college or university refers to a college or university which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

DELIVERY OF BENEFIT CHECKS

SEC. 708. [42 U.S.C. 909] (a) If the day regularly designated for the delivery of benefit checks under title II or title XVI falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5, United States Code[1]) in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) If more than the correct amount of payment under title II or XVI is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) before the end of the month for which such check is issued, no action shall be taken (under section 204 or 1631(b) or otherwise) to recover such payment or the incorrect portion thereof.[2]

RECOMMENDATIONS BY BOARD OF TRUSTEES TO REMEDY INADEQUATE BALANCES IN THE SOCIAL SECURITY TRUST FUNDS[3]

SEC. 709. [42 U.S.C. 910] (a) If the Board of Trustees of the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, or the Federal Supplementary Medical Insurance Trust Fund determines at any time that the balance ratio of any such Trust Fund for any calendar year may become less than 20 percent, the Board shall promptly submit to each House of the Congress a report setting forth its recommendations for statutory adjustments affecting the receipts and disbursements of such Trust Fund necessary to maintain the balance ratio of such Trust Fund at not less than 20 percent, with due regard to the economic conditions which created such inadequacy in the balance ratio and the amount of time necessary to alleviate such inadequacy in a prudent manner. The report shall set forth specifically the extent to which benefits would have to be reduced, taxes under section 1401, 3101, or 3111 of the Internal Revenue Code of 1954[4] would have to be increased, or a combination thereof, in order to obtain the objectives referred to in the preceding sentence.

(b) For purposes of this section, the term "balance ratio" means, with respect to any calendar year in connection with any Trust Fund referred to in subsection (a), the ratio of—

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[1]Legal public holidays which may affect check delivery are (1) New Year's Day [January 1], (2) Independence Day [July 4], and Labor Day [first Monday in September].

[2]P.L. 95-216, §333, added §708, effective with respect to benefit checks which are for delivery on a regularly designated day which occurs on or after January 19, 1978.

[3]P.L. 98-21, §143, added §709, effective April 20, 1983.

[4]See P.L. 83-591, "Internal Revenue Code of 1954", §1401, p. 803.

(1) the balance in such Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to such Trust Fund under section 201(l) or 1817(j), as of the beginning of such year, to

(2) the total amount which (as estimated by the Secretary) will be paid from such Trust Fund during such calendar year for all purposes authorized by section 201, 1817, or 1841 (as applicable), other than payments of interest on, or repayments of, loans under section 201(l) or 1817(j), but excluding any transfer payments between such Trust Fund and any other Trust Fund referred to in subsection (a) and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from that Account.

BUDGETARY TREATMENT OF TRUST FUND OPERATIONS[1]

SEC. 710. [42 U.S.C. 911] The disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Funds, including the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954[2], shall be set forth separately in such budgets.

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[1]P.L. 98-21, §346(a)(1), added §710, effective with respect to fiscal years beginning on or after October 1, 1984, and ending on or before September 30, 1992, except that such amendment shall apply with respect to the fiscal year beginning on October 1, 1983, to the extent it relates to the congressional budget. For fiscal years beginning on or after October 1, 1992, §710 reads as follows:

"BUDGETARY TREATMENT OF TRUST FUND OPERATIONS

"Sec. 710. (a) The receipts and disbursements of the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, and the Federal Hospital Insurance Trust Fund and the taxes imposed under sections 1401, 3101, and 3111 of the Internal Revenue Code of 1954 shall not be included in the totals of the budget of the United States Government as submitted by the President or of the congressional budget and shall be exempt from any general budget limitation imposed by statute on expenditures and net lending (budget outlays) of the United States Government.

"(b) The disbursements of the Federal Supplementary Medical Insurance Trust Fund shall be treated as a separate major functional category in the budget of the United States Government as submitted by the President and in the congressional budget, and the receipts of such Trust Fund shall be set forth separately in such budgets."

[2]See P.L. 83-591, "Internal Revenue Code of 1954", §1401, p. 803.

[TITLE VIII—TAXES WITH RESPECT TO EMPLOYMENT][1]

[1]P.L. 74-271, 49 Stat. 620, approved August 14, 1935, included Title VIII.
P.L. 76-1, §4, 53 Stat. 1, repealed Title VIII, effective February 11, 1939. The substance of Title VIII then was included in the Internal Revenue Code of 1939 at §§1400-1425. Currently, the substance of Title VIII may be found in the Internal Revenue Code of 1954 at §§3101-3126 (Subtitle C—Employment Taxes; Chapter 21—Federal Insurance Contributions Act), p. 813.

[Social Security Act §§205(c)(5)(F)(i) and 1106(a) contain references to Title VIII.]

TITLE IX—MISCELLANEOUS PROVISIONS RELATING TO EMPLOYMENT SECURITY[1]

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[1]Title IX of the Social Security Act is administered by the Department of Labor.

Title IX appears in the United States Code as §§1101-1109, subchapter IX, chapter 7, Title 42.

Regulations of the Secretary of Labor relating to Title IX are contained in chapter V, Title 20, Code of Federal Regulations.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 93-618, "Trade Act of 1974", §§221-249, with respect to adjustment assistance for workers.

[2]This table of contents does not appear in the law.

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EMPLOYMENT SECURITY ADMINISTRATION ACCOUNT

Establishment of Account

SECTION 901. [42 U.S.C. 1101] (a) There is hereby established in the Unemployment Trust Fund an employment security administration account.

Appropriations to Account

(b)(1) There is hereby appropriated to the Unemployment Trust Fund for credit to the employment security administration account, out of any moneys in the Treasury not otherwise appropriated, for the fiscal year ending June 30, 1961, and for each fiscal year thereafter, an amount equal to 100 per centum of the tax (including interest, penalties, and additions to the tax) received during the fiscal year under the Federal Unemployment Tax Act[1] and covered into the Treasury.

(2) The amount appropriated by paragraph (1) shall be transferred at least monthly from the general fund of the Treasury to the Unemployment Trust Fund and credited to the employment security administration account. Each such transfer shall be based on estimates made by the Secretary of the Treasury of the amounts received in the Treasury. Proper adjustments shall be made in the amounts subsequently transferred, to the extent prior estimates (including estimates for the fiscal year ending June 30, 1960) were in excess of or were less than the amounts required to be transferred.

(3) The Secretary of the Treasury is directed to pay from time to time from the employment security administration account into the Treasury, as repayments to the account for refunding internal revenue collections, amounts equal to all refunds made after June 30, 1960, of amounts received as tax under the Federal Unemployment Tax Act[2] (including interest on such refunds).

Administrative Expenditures

(c) [3]

(1) There are hereby authorized to be made available for expenditure out of the employment security administration account for the fiscal year ending June 30, 1971, and for each fiscal year thereafter—

(A) such amounts (not in excess of the applicable limit provided by paragraph (3) and, with respect to clause (ii), not in excess of the limit provided by paragraph (4)) as the Congress may deem appropriate for the purpose of—

(i) assisting the States in the administration of their unemployment compensation laws as provided in title III (including administration pursuant to agreements under any Federal unemployment compensation law),

(ii) the establishment and maintenance of systems of public employment offices in accordance with the Act of

[1]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[2]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[3]As in original, P.L. 91-373, §303(a)(1) [84 Stat. 713].

June 6, 1933[1], as amended (29 U.S.C., secs. 49-49n), and

(iii) carrying into effect section 2003 of title 38 of the United States Code;

(B) such amounts (not in excess of the limit provided by paragraph (4) with respect to clause (iii)) as the Congress may deem appropriate for the necessary expenses of the Department of Labor for the performance of its functions under—

(i) this title and titles III and XII of this Act,

(ii) the Federal Unemployment Tax Act[2],

(iii) the provisions of the Act of June 6, 1933[3], as amended,

(iv) chapter 41 (except section 2003) of title 38 of the United States Code, and

(v) any Federal unemployment compensation law.

The term "necessary expenses" as used in this subparagraph (B) shall include the expense of reimbursing a State for salaries and other expenses of employees of such State temporarily assigned or detailed to duty with the Department of Labor and of paying such employees for travel expenses, transportation of household goods, and per diem in lieu of subsistence while away from their regular duty stations in the State, at rates authorized by law for civilian employees of the Federal Government.

(2) The Secretary of the Treasury is directed to pay from the employment security administration account into the Treasury as miscellaneous receipts the amount estimated by him which will be expended during a three-month period by the Treasury Department for the performance of its functions under—

(A) this title and titles III and XII of this Act, including the expenses of banks for servicing unemployment benefit payment and clearing accounts which are offset by the maintenance of balances of Treasury funds with such banks,

(B) the Federal Unemployment Tax Act[4], and

(C) any Federal unemployment compensation law with respect to which responsibility for administration is vested in the Secretary of Labor.

If it subsequently appears that the estimates under this paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Secretary of the Treasury in future payments.

(3)(A) For purposes of paragraph (1)(A), the limitation on the amount authorized to be made available for any fiscal year after June 30, 1970, is, except as provided in subparagraph (B) and in the second sentence of section 901(f)(3)(A), an amount equal to 95 percent of the amount estimated and set forth in the budget of the United States Government for such fiscal year as the amount by which the net receipts during such year under the Federal Unemployment Tax Act[5] will exceed the amount trans-

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[1]P.L. 73-30, "Wagner-Peyser Act".

[2]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[3]P.L. 73-30, "Wagner-Peyser Act". See 29 U.S.C. 49-49k.

[4]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[5]See P.L. 83-591, "Internal Revenue Code of 1954", §3301, p. 849.

ferred under section 905(b) during such year to the extended unemployment compensation account.

(B) The limitation established by subparagraph (A) is increased by any unexpended amount retained in the employment security administration account in accordance with section 901(f)(2)(B).

(C) Each estimate of net receipts under this paragraph shall be based upon (i) a tax rate of 0.6[1] percent in the case of any calendar year for which the rate of tax under section 3301 of the Federal Unemployment Tax Act[2] is 6.0[3] percent, and (ii) a tax rate of 0.8 percent in the case of any calendar year for which the rate of tax under such section is 6.2[4] percent.[5]

(4) For purposes of paragraphs (1)(A)(ii) and (1)(B)(iii) the amount authorized to be made available out of the employment security administration account for any fiscal year after June 30, 1972, shall reflect the proportion of the total cost of administering the system of public employment offices in accordance with the Act of June 6, 1933[6], as amended, and of the necessary expenses of the Department of Labor for the performance of its functions under the provisions of such Act, as the President determines is an appropriate charge to the employment security administration account, and reflects in his annual budget for such year. The President's determination, after consultation with the Secretary, shall take into account such factors as the relationship between employment subject to State laws and the total labor force in the United States, the number of claimants and the number of job applicants, and such other factors as he finds-relevant.

Additional Tax Attributable to Reduced Credits

(d)(1) The Secretary of the Treasury is directed to transfer from the employment security administration account—

(A) To the Federal unemployment account, an amount equal to the amount by which—

(i) 100 per centum of the additional tax received under the Federal Unemployment Tax Act[7] with respect to any State by reason of the reduced credits provisions of section 3302(c)(3) of such Act[8] and covered into the Treasury for the repayment of advances made to the State under section 1201, exceeds

(ii) the amount transferred to the account of such State pursuant to subparagraph (B) of this paragraph.

Any amount transferred pursuant to this subparagraph shall be credited against, and shall operate to reduce, that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

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[1]P.L. 97-248, §271(c)(3)(D)(i), struck out "0.5" and substituted "0.6", effective with respect to remuneration paid after December 31, 1984.

[2]See P.L. 83-591, "Internal Revenue Code of 1954", §3301, p. 849.

[3]P.L. 97-248, §271(c)(3)(D)(ii), struck out "3.2" and substituted "6.0", effective with respect to remuneration paid after December 31, 1984.

[4]P.L. 97-248, §271(c)(3)(D)(iii), struck out "3.5" and substituted "6.2", effective with respect to remuneration paid after December 31, 1984.

[5]P.L. 97-248, §271(b)(2)(A), amended subparagraph (C) in its entirety, effective with respect to remuneration paid after December 31, 1982.

[6]P.L. 73-30, "Wagner-Peyser Act". See 29 U.S.C. 49-49k.

[7]See P.L. 83-591, "Internal Revenue Code of 1954", §3301, p. 849.

[8]See P.L. 83-591, "Internal Revenue Code of 1954", §3302(c)(3), p. 851.

(B) To the account (in the Unemployment Trust Fund) of the State with respect to which employers paid such additional tax, an amount equal to the amount by which such additional tax received and covered into the Treasury exceeds that balance of advances, made under section 1201 to the State, with respect to which employers paid such additional tax.

(2) Transfers under this subsection shall be as of the beginning of the month succeeding the month in which the moneys were credited to the employment security administration account pursuant to subsection (b)(2).

Revolving Fund

(e)(1) There is hereby established in the Treasury a revolving fund which shall be available to make the advances authorized by this subsection. There are hereby authorized to be appropriated, without fiscal year limitation, to such revolving fund such amounts as may be necessary for the purposes of this section.

(2) The Secretary of the Treasury is directed to advance from time to time from the revolving fund to the employment security administration account such amounts as may be necessary for the purposes of this section. If the net balance in the employment security administration account as of the beginning of any fiscal year equals 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the preceding fiscal year, no advance may be made under this subsection during such fiscal year.

(3) Advances to the employment security administration account made under this subsection shall bear interest until repaid at a rate equal to the average rate of interest (computed as of the end of the calendar month next preceding the date of such advance) borne by all interest-bearing obligations of the United States then forming a part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest shall be the multiple of one-eighth of 1 per centum next lower than such average rate.

(4) Advances to the employment security administration account made under this subsection, plus interest accrued thereon, shall be repaid by the transfer from time to time, from the employment security administration account to the revolving fund, of such amounts as the Secretary of the Treasury, in consultation with the Secretary of Labor, determines to be available in the employment security administration account for such repayment. Any amount transferred as a repayment under this paragraph shall be credited against, and shall operate to reduce, any balance of advances (plus accrued interest) repayable under this subsection.

Determination of Excess and Amount To Be Retained in Employment Security Administration Account

(f)(1) The Secretary of the Treasury shall determine as of the close of each fiscal year (beginning with the fiscal year ending June 30, 1961) the excess in the employment security administration account.

(2)(A) Except as provided in subparagraph (B), the excess in the employment security administration account as of the close of any

fiscal year is the amount by which the net balance in such account as of such time (after the application of section 902(b) and section 901(f)(3)(C)) exceeds the net balance in the employment security administration account as of the beginning of that fiscal year (including the fiscal year for which the excess is being computed) for which the net balance was higher than as of the beginning of any other such fiscal year.

(B) With respect to the fiscal years ending June 30, 1970, June 30, 1971, and June 30, 1972, the balance in the employment security administration account at the close of each such fiscal year shall not be considered excess but shall be retained in the account for use as provided in paragraph (1) of subsection (c).

(3)(A) The excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, shall be retained (as of the beginning of the succeeding fiscal year) in the employment security administration account until the amount in such account is equal to 40 percent of the amount of the total appropriation by the Congress out of the employment security administration account for the fiscal year for which the excess is determined. Three-eighths of the amount in the employment security administration account as of the beginning of any fiscal year after June 30, 1972, or $150 million, whichever is the lesser, is authorized to be made available for such fiscal year pursuant to subsection (c)(1) for additional costs of administration due to an increase in the rate of insured unemployment for a calendar quarter of at least 15 percent over the rate of insured unemployment for the corresponding calendar quarter in the immediately preceding year.

(B) If the entire amount of the excess determined as provided in paragraph (2) as of the close of any fiscal year after June 30, 1972, is not retained in the employment security administration account, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the balance of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to the limit provided in section 905(b)(2).

(C) If as of the close of any fiscal year after June 30, 1972, the amount in the extended unemployment compensation account exceeds the limit provided in section 905(b)(2), such excess shall be transferred to the employment security administration account as of the close of such fiscal year.

(4) For the purposes of this section, the net balance in the employment security administration account as of any time is the amount in such account as of such time reduced by the sum of—

(A) the amounts then subject to transfer pursuant to subsection (d), and

(B) the balance of advances (plus interest accrued thereon) then repayable to the revolving fund established by subsection (e).

The net balance in the employment security administration account as of the beginning of any fiscal year shall be determined after the disposition of the excess in such account as of the close of the preceding fiscal year.

TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT AND REPORT TO CONGRESS

TRANSFERS TO FEDERAL UNEMPLOYMENT ACCOUNT

SEC. 902. [42 U.S.C. 1102] (a) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year and the entire amount of such excess is not retained in the employment security administration account or transferred to the extended unemployment compensation account as provided in section 901(f)(3), there shall be transferred (as of the beginning of the succeeding fiscal year) to the Federal unemployment account the balance of such excess or so much thereof as is required to increase the amount in the Federal unemployment account to whichever of the following is the greater:

(1) $550 million, or

(2) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

Transfers to Employment Security Administration Account

(b) The amount, if any, by which the amount in the Federal unemployment account as of the close of any fiscal year exceeds the greater of the amounts specified in paragraphs (1) and (2) of subsection (a) shall be transferred to the employment security administration account as of the close of such fiscal year.

REPORT TO THE CONGRESS

(c) Whenever the Secretary of Labor has reason to believe that in the next fiscal year the employment security administration account will reach the limit provided for such account in section 901(f)(3)(A), and the Federal unemployment account will reach the limit provided for such account in section 902(a), and the extended unemployment compensation account will reach the limit provided for such account in section 905(b)(2), he shall, after consultation with the Secretary of the Treasury, so report to the Congress with a recommendation for appropriate action by the Congress.

AMOUNTS TRANSFERRED TO STATE ACCOUNTS

In General

SEC. 903. [42 U.S.C. 1103] (a)(1) If as of the close of any fiscal year after the fiscal year ending June 30, 1972, the amount in the extended unemployment compensation account has reached the limit provided in section 905(b)(2) and the amount in the Federal unemployment account has reached the limit provided in section 902(a) and all advances pursuant to section 905(d) and section 1203 have been repaid, and there remains in the employment security administration account any amount over the amount provided in section

901(f)(3)(A), such excess amount, except as provided in subsection (b), shall be transferred (as of the beginning of the succeeding fiscal year) to the accounts of the States in the Unemployment Trust Fund.

(2) Each State's share of the funds to be transferred under this subsection as of any October 1—

(A) shall be determined by the Secretary of Labor and certified by him to the Secretary of the Treasury before that date on the basis of reports furnished by the States to the Secretary of Labor before September 1, and

(B) shall bear the same ratio to the total amount to be so transferred as the amount of wages subject to contributions under such State's unemployment compensation law during the preceding calendar year which have been reported to the State before August 1 bears to the total of wages subject to contributions under all State unemployment compensation laws during such calendar year which have been reported to the States before August 1.

Limitations on Transfers

(b)(1) If the Secretary of Labor finds that on October 1 of any fiscal year—

(A) a State is not eligible for certification under section 303, or

(B) the law of a State is not approvable under section 3304 of the Federal Unemployment Tax Act[1],

then the amount available for transfer to such State's account shall, in lieu of being so transferred, be transferred to the Federal unemployment account as of the beginning of such October 1. If, during the fiscal year beginning on such October 1, the Secretary of Labor finds and certifies to the Secretary of the Treasury that such State is eligible for certification under section 303, that the law of such State is approvable under such section 3304[2], or both, the Secretary of the Treasury shall transfer such amount from the Federal unemployment account to the account of such State. If the Secretary of Labor does not so find and certify to the Secretary of the Treasury before the close of such fiscal year then the amount which was available for transfer to such State's account as of October 1 of such fiscal year shall (as of the close of such fiscal year) become unrestricted as to use as part of the Federal unemployment account.

(2) The amount which, but for this paragraph, would be transferred to the account of a State under subsection (a) or paragraph (1) of this subsection shall be reduced (but not below zero) by the balance of advances made to the State under section 1201. The sum by which such amount is reduced shall—

(A) be transferred to or retained in (as the case may be) the Federal unemployment account, and

(B) be credited against, and operate to reduce—

(i) first, any balance of advances made before the date of the enactment of the Employment Security Act of 1960[3] to the State under section 1201, and

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[1]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See §3304, p. 861.

[2]See P.L. 83-591, "Internal Revenue Code of 1954", §3304, p. 861.

[3]Enacted on September 13, 1960, [Title V of P.L. 86-778; 74 Stat. 970].

(ii) second, any balance of advances made on or after such date[1] to the State under section 1201.

Use of Transferred Amounts

(c)(1) Except as provided in paragraph (2), amounts transferred to the account of a State pursuant to subsections (a) and (b) shall be used only in the payment of cash benefits to individuals with respect to their unemployment, exclusive of expenses of administration.

(2) A State may, pursuant to a specific appropriation made by the legislative body of the State, use money withdrawn from its account in the payment of expenses incurred by it for the administration of its unemployment compensation law and public employment offices if and only if—

(A) the purposes and amounts were specified in the law making the appropriation,

(B) the appropriation law did not authorize the obligation of such money after the close of the two-year period which began on the date of enactment of the appropriation law,

(C) the money is withdrawn and the expenses are incurred after such date of enactment, and

(D) the appropriation law limits the total amount which may be obligated during a twelve-month period (as prescribed in the law of the State), or during a transitional period of less than twelve months caused by a change in the twelve-month period (as prescribed in the law of the State), to an amount which does not exceed the amount by which (i) the aggregate of the amounts transferred to the account of such State pursuant to subsections (a) and (b) during such twelve-month period or transitional period of less than twelve months and the thirty-four[2] preceding twelve-month periods (including the transitional period of less than twelve months if it is within such thirty-four[3] twelve-month periods) exceeds (ii) the aggregate of the amounts used by the State pursuant to this subsection and charged against the amounts transferred to the account of such State during such thirty-four[4] twelve-month periods (and the transitional period of less than twelve months if it is within the thirty-four[5] twelve-month periods).

For the purposes of subparagraph (D), amounts used by a State during any twelve-month period or transitional period of less than twelve months shall be charged against equivalent amounts which were transferred and which have not previously been so charged; except that no amount obligated for administration during any such period may be charged against any amount transferred during a twelve-month period or transitional period of less than twelve months earlier than the thirty-fourth[6] preceding twelve-month period

[1]Enacted on September 13, 1960, [Title V of P.L. 86-778; 74 Stat. 970].

[2]P.L. 97-248, §192(a)(1), struck out "twenty-four" and substituted "thirty-four", effective September 3, 1982.

[3]P.L. 97-248, §192(a)(1), struck out "twenty-four" and substituted "thirty-four", effective September 3, 1982.

[4]P.L. 97-248, §192(a)(1), struck out "twenty-four" and substituted "thirty-four", effective September 3, 1982.

[5]P.L. 97-248, §192(a)(1), struck out "twenty-four" and substituted "thirty-four", effective September 3, 1982.

[6]P.L. 97-248, §192(a)(2), struck out "twenty-fourth" and substituted "thirty-fourth", effective September 3, 1982.

(including the transitional period of less than twelve months if it is within such thirty-four[1] twelve-month periods).

(3)(A) If—

(i) amounts transferred to the account of a State pursuant to subsections (a) and (b) of this section were used in payment of unemployment benefits to individuals; and

(ii) the Governor of such State submits a request to the Secretary of Labor that such amounts be restored under this paragraph,

then the amounts described in clause (i) shall be restored to the status of funds transferred under subsections (a) and (b) of this section which have not been used by eliminating any charge against amounts so transferred for the use of such amounts in the payment of unemployment benefits.

(B) Subparagraph (A) shall apply only to the extent that the amounts described in clause (i) of such subparagraph do not exceed the amount then in the State's account.

(C) Subparagraph (A) shall not apply if the State has a balance of advances made to its account under title XII of this Act.

(D) If the Secretary of Labor determines that the requirements of this paragraph are met with respect to any request, the Secretary shall notify the Governor of the State that such requirements are met with respect to such request and the amount restored under this paragraph. Such restoration shall be as of the first day of the first month following the month in which the notification is made.[2]

UNEMPLOYMENT TRUST FUND

Establishment, etc.

SEC. 904. [42 U.S.C. 1104] (a)There is hereby established in the Treasury of the United States a trust fund to be known as the "Unemployment Trust Fund", hereinafter in this title called the "Fund". The Secretary of the Treasury is authorized and directed to receive and hold in the Fund all moneys deposited therein by a State agency from a State unemployment fund, or by the Railroad Retirement Board to the credit of the railroad unemployment insurance account or the railroad unemployment insurance administration fund, or otherwise deposited in or credited to the Fund or any account therein. Such deposit may be made directly with the Secretary of the Treasury, with any depositary[3] designated by him for such purpose, or with any Federal Reserve Bank.

Investments

(b) It shall be the duty of the Secretary of the Treasury to invest such portion of the Fund as is not, in his judgment, required to meet current withdrawals. Such investment may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the

[1] P.L. 97-248, §192(a)(1), struck out "twenty-four" and substituted "thirty-four", effective September 3, 1982.

[2] P.L. 97-248, §192(b), added paragraph (3), effective September 3, 1982.

[3] As in original. Possibly should be "depository".

issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act[1], as amended, are hereby extended to authorize the issuance at par of special obligations exclusively to the Fund. Such special obligations shall bear interest at a rate equal to the average rate of interest, computed as of the end of the calendar month next preceding the date of such issue, borne by all interest-bearing obligations of the United States then forming part of the public debt; except that where such average rate is not a multiple of one-eighth of 1 per centum, the rate of interest of such special obligations shall be the multiple of one-eighth of 1 per centum next lower than such average rate. Obligations other than such special obligations may be acquired for the Fund only on such terms as to provide an investment yield not less than the yield which would be required in the case of special obligations if issued to the Fund upon the date of such acquisition. Advances made to the Federal unemployment account pursuant to section 1203 shall not be invested.

Sale or Redemption of Obligations

(c) Any obligations acquired by the Fund (except special obligations issued exclusively to the Fund) may be sold at the market price, and such special obligations may be redeemed at par plus accrued interest.

Treatment of Interest and Proceeds

(d) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Fund shall be credited to and form a part of the Fund.

Separate Book Accounts

(e) The Fund shall be invested as a single fund, but the Secretary of the Treasury shall maintain a separate book account for each State agency, the employment security administration account, the Federal unemployment account, the railroad unemployment insurance account, and the railroad unemployment insurance administration fund and shall credit quarterly (on March 31, June 30, September 30, and December 31, of each year) to each account, on the basis of the average daily balance of such account, a proportionate part of the earnings of the Fund for the quarter ending on such date. For the purpose of this subsection, the average daily balance shall be computed—

(1) in the case of any State account, by reducing (but not below zero) the amount in the account by the balance of advances made to the State under section 1201, and

(2) in the case of the Federal unemployment account—

(A) by adding to the amount in the account the aggregate of the reductions under paragraph (1), and

[1] P.L. 97-258, §5(b) [96 Stat. 1068, 1072], repealed the Second Liberty Bond Act [P.L. 65-43; Act of September 24, 1917; Chapter 56; 40 Stat. 288]. Under P.L. 97-258, §4(b), references to the Second Liberty Bond Act are deemed to be references to corresponding provisions of Title 31 of the United States Code. See, instead, chapter 31 of Title 31 of the U.S. Code.

(B) by subtracting from the sum so obtained the balance of advances made under section 1203 to the account.

Payments to State Agencies and Railroad Retirement Board

(f) The Secretary of the Treasury is authorized and directed to pay out of the Fund to any State agency such amount as it may duly requisition, not exceeding the amount standing to the account of such State agency at the time of such payment. The Secretary of the Treasury is authorized and directed to make such payments out of the railroad unemployment insurance account for the payment of benefits, and out of the railroad unemployment insurance administration fund for the payment of administrative expenses, as the Railroad Retirement Board may duly certify, not exceeding the amount standing to the credit of such account or such fund, as the case may be, at the time of such payment.

Federal Unemployment Account

(g) There is hereby established in the Unemployment Trust Fund a Federal unemployment account. There is hereby authorized to be appropriated to such Federal unemployment account a sum equal to (1) the excess of taxes collected prior to July 1, 1946, under title IX of this Act or under the Federal Unemployment Tax Act[1], over the total unemployment administrative expenditures made prior to July 1, 1946, plus (2) the excess of taxes collected under the Federal Unemployment Tax Act[2] after June 30, 1946, and prior to July 1, 1953, over the unemployment administrative expenditures made after June 30, 1946, and prior to July 1, 1953. As used in this subsection, the term "unemployment administrative expenditures" means expenditures for grants under title III of this Act, expenditures for the administration of that title by the Social Security Board, the Federal Security Administrator, or the Secretary of Labor, and expenditures for the administration of title IX of this Act, or of the Federal Unemployment Tax Act[3], by the Department of the Treasury, the Social Security Board, the Federal Security Administrator, or the Secretary of Labor. For the purposes of this subsection, there shall be deducted from the total amount of taxes collected prior to July 1, 1943, under title IX of this Act, the sum of $40,561,886.43 which was authorized to be appropriated by the Act of August 24, 1937[4] (50 Stat. 754), and the sum of $18,451,846 which was authorized to be appropriated by section 11(b) of the Railroad Unemployment Insurance Act[5].

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[1]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[2]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[3]The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See p. 849.

[4]P.L. 75-353.

[5]P.L. 75-722.

EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT[1]

ESTABLISHMENT OF ACCOUNT

SEC. 905. [42 U.S.C. 1105] (a) There is hereby established in the Unemployment Trust Fund an extended unemployment compensation account. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account.

TRANSFERS TO ACCOUNT

(b)(1) Except as provided by paragraph (3), the Secretary of the Treasury shall transfer (as of the close of July 1970, and each month thereafter), from the employment security administration account to the extended unemployment compensation account established by subsection (a), an amount determined by him to be equal, in the case of any month before April 1972, to one-fifth, and in the case of any month after March 1972, to one-tenth, of the amount by which—

(A) transfers to the employment security administration account pursuant to section 901(b)(2) during such month, exceed

(B) payments during such month from the employment security administration account pursuant to section 901(b)(3) and (d).

If for any such month the payments referred to in subparagraph (B) exceed the transfers referred to in subparagraph (A), proper adjustments shall be made in the amounts subsequently transferred. In the case of any month after March 1983 and before April 1 of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act[2] applies, the first sentence of this paragraph shall be applied by substituting "40 percent" for "one-tenth".[3]

(2) Whenever the Secretary of the Treasury determines pursuant to section 901(f) that there is an excess in the employment security administration account as of the close of any fiscal year beginning after June 30, 1972, there shall be transferred (as of the beginning of the succeeding fiscal year) to the extended unemployment compensation account the total amount of such excess or so much thereof as is required to increase the amount in the extended unemployment compensation account to whichever of the following is the greater:

(A) $750,000,000, or

(B) the amount (determined by the Secretary of Labor and certified by him to the Secretary of the Treasury) equal to one-eighth of 1 percent of the total wages subject (determined without any limitation on amount) to contributions under all State unemployment compensation laws for the calendar year ending during the fiscal year for which the excess is determined.

(3) The Secretary of the Treasury shall make no transfer pursuant to paragraph (1) as of the close of any month if he determines that the amount in the extended unemployment compensation account is equal to (or in excess of) the limitation provided in paragraph (2).

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[1] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §604(a), with respect to an appropriation of funds to assist States in meeting administrative costs.

[2] The "Federal Unemployment Tax Act" is in §§3301-3311 of P.L. 83-591, "Internal Revenue Code of 1954". See §3301, p. 849.

[3] P.L. 97-248, §271(b)(2)(B), amended this sentence in its entirety, effective with respect to remuneration paid after December 31, 1982. Formerly, this sentence read as follows: "In the case of any month after March 1977 and before April of the first calendar year to which paragraph (2) of section 3301 of the Federal Unemployment Tax Act applies, the first sentence of this paragraph shall be applied by substituting 'five-fourteenths' for 'one-tenth'."

TRANSFERS TO STATE ACCOUNTS

(c) Amounts in the extended unemployment compensation account shall be available for transfer to the accounts of the States in the Unemployment Trust Fund as provided in section 204(e) of the Federal-State Extended Unemployment Compensation Act of 1970[1].

ADVANCES TO EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT AND REPAYMENT

(d) There are hereby authorized to be appropriated, without fiscal year limitation, to the extended unemployment compensation account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of the Federal-State Extended Unemployment Compensation Act of 1970[2]. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the extended unemployment compensation account to the general fund of the Treasury, at such times as the amount in the extended unemployment compensation account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose. Repayments under the preceding sentence shall be made whenever the Secretary of the Treasury (after consultation with the Secretary of Labor) determines that the amount then in the account exceeds the amount necessary to meet the anticipated payments from the account during the next 3 months.[3] Any amount transferred as a repayment under this subsection shall be credited against, and shall operate to reduce, any balance of advances repayable under this subsection.

UNEMPLOYMENT COMPENSATION RESEARCH PROGRAM

SEC. 906. [42 U.S.C. 1106] (a) The Secretary of Labor shall—

(1) establish a continuing and comprehensive program of research to evaluate the unemployment compensation system. Such research shall include, but not be limited to, a program of factual studies covering the role of unemployment compensation under varying patterns of unemployment including those in seasonal industries, the relationship between the unemployment compensation and other social insurance programs, the effect of State eligibility and disqualification provisions, the personal characteristics, family situations, employment background and experience of claimants, with the results of such studies to be made public; and

(2) establish a program of research to develop information (which shall be made public) as to the effect and impact of extending coverage to excluded groups with first attention to agricultural labor.

(b) To assist in the establishment and provide for the continuation of the comprehensive research program relating to the unemployment compensation system, there are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter, such sums, not to exceed $8,000,000, as may be necessary to carry out the purposes of this section. From the sums authorized to be appropriated by this subsection the Secretary may provide for the conduct of such research through grants or contracts.

[1] P.L. 91-373.
[2] P.L. 91-373.
[3] P.L. 97-248, §275, added the preceding sentence, effective September 3, 1982.

PERSONNEL TRAINING

SEC. 907. [42 U.S.C. 1107] (a) In order to assist in increasing the effectiveness and efficiency of administration of the unemployment compensation program by increasing the number of adequately trained personnel, the Secretary of Labor shall—

(1) provide directly, through State agencies, or through contracts with institutions of higher education or other qualified agencies, organizations, or institutions, programs and courses designed to train individuals to prepare them, or improve their qualifications, for service in the administration of the unemployment compensation program, including claims determinations and adjudication, with such stipends and allowances as may be permitted under regulations of the Secretary;

(2) develop training materials for and provide technical assistance to the State agencies in the operation of their training programs;

(3) under such regulations as he may prescribe, award fellowships and traineeships to persons in the Federal-State employment security agencies, in order to prepare them or improve their qualifications for service in the administration of the unemployment compensation program.

(b) The Secretary may, to the extent that he finds such action to be necessary, prescribe requirements to assure that any person receiving a fellowship, traineeship, stipend or allowance shall repay the costs thereof to the extent that such person fails to serve in the Federal-State employment security program for the period prescribed by the Secretary. The Secretary may relieve any individual of his obligation to so repay, in whole or in part, whenever and to the extent that such repayment would, in his judgment, be inequitable or would be contrary to the purposes of any of the programs established by this section.

(c) The Secretary, with the concurrence of the State, may detail Federal employees to State unemployment compensation administration and the Secretary may concur in the detailing of State employees to the United States Department of Labor for temporary periods for training or for purposes of unemployment compensation administration, and the provisions of section 507 of the Elementary and Secondary Education Act of 1965[1] (79 Stat. 27) or any more general program of interchange enacted by a law amending, supplementing, or replacing section 507 shall apply to any such assignment.

(d) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $5,000,000, as may be necessary to carry out the purposes of this section.

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[1]See, instead, 5 U.S.C. 3371-3376. [P.L. 89-10, 79 Stat. 27, §507 was classified to 20 U.S.C. 867. P.L. 91-230, §143(a)(3), redesignated §507 as §553; §553 was classified to 20 U.S.C. 869b. P.L. 91-648, 81 Stat. 1909, §403, repealed §553, effective January 5, 1971. P.L. 91-648, §402, approved January 5, 1971, amended chapter 33 of Title 5, U.S.C., to include 5 U.S.C. 3371-3376, "Subchapter VI, Assignments to and from States".]

FEDERAL ADVISORY COUNCIL

SEC. 908. [42 U.S.C. 1108] (a) The Secretary of Labor shall establish a Federal Advisory Council, of not to exceed 16 members including the chairman, for the purpose of reviewing the Federal-State program of unemployment compensation and making recommendations to him for improvement of the system.

(b) The Council shall be appointed by the Secretary without regard to the civil service laws and shall consist of men and women who shall be representatives of employers and employees in equal numbers, and the public.

(c) The Secretary may make available to the Council an Executive Secretary and secretarial, clerical, and other assistance, and such pertinent data prepared by the Department of Labor, as it may require to carry out its functions.

(d) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703(b)[1] for persons in government service employed intermittently.

(e) The Secretary shall encourage the organization of similar State advisory councils.

(f) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1971, and for each fiscal year thereafter such sums, not to exceed $100,000, as may be necessary to carry out the purposes of this section.

FEDERAL EMPLOYEES COMPENSATION ACCOUNT

SEC. 909. [42 U.S.C. 1109] There is hereby established in the Unemployment Trust Fund a Federal Employees Compensation Account which shall be used for the purposes specified in section 8509 of title 5, United States Code. For the purposes provided for in section 904(e), such account shall be maintained as a separate book account.

[1] As in original. There is no longer a subsection (b) to section 5703 of Title 5, U.S. Code.

[TITLE X—GRANTS TO STATES FOR AID TO THE BLIND][1]

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APPROPRIATION

SECTION 1001. [42 U.S.C. 1201] For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals who are blind[3], there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the blind.

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[1]P.L. 92-603, §303, *repealed* Title X, effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands.

Title X of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under Title X. The Administration for Public Services, Office of Human Development Services, administers social services under Title X.

Title X appears in the United States Code as §§1201-1206, subchapter X, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title X are contained in subtitle A and chapter XIII, Title 45, Code of Federal Regulations.

The Commonwealth of the Northern Marianas may elect to initiate a Title X social services program if it chooses; see P.L. 94-241, [Covenant to Establish Northern Mariana Islands], approved March 24, 1976.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions.

See P.L. 87-543, "Public Welfare Amendments of 1962", §141(b), with respect to ineligibility to receive payments under Title X where payments have been made under Title XVI.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 89-97, "Social Security Amendments of 1965", §121(b), with respect to restrictions on payment to a State receiving payments under Title XIX.

[2]This table of contents does not appear in the law.

[3]P.L. 97-35, §2184(c)(1), struck out "and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care", effective August 13, 1981.

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STATE PLANS FOR AID TO THE BLIND

SEC. 1002. [42 U.S.C. 1202] (a) A State plan for aid to the blind must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan[1], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; and (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act or aid to families with dependent children under the State plan approved under section 402 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a

[1] P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A).

plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income;[1] (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;[2] (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1,

[1]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

See P.L. 79-396, "National School Lunch Act", §12(e), with respect to exclusion from income and resources of assistance to children under that act.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 89-642, "Child Nutrition Act of 1966", §11(b), with respect to exclusion from income and resources of the value of assistance to children under that act.

See P.L. 90-248, "Social Security Amendments of 1967", §248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments made under that act.

See P.L. 93-112, "Rehabilitation Act of 1973", §613(c), with respect to conditional exclusion of wages, allowances, transportation reimbursement, and attendant care costs.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to exclusion from income and resources of payments to volunteers under that act.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico, Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (see P.L. 86-372, §202).

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

[2]See P.L. 82-183, "Revenue Act of 1951", §618, for the Jenner Amendment prohibiting denial of grants-in-aid under certain conditions.

1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title. In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this title, the Secretary shall approve a plan of such State for aid to the blind for purposes of this title, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this title for an approved plan for aid to the blind; but payments under section 1003 shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1003 under a plan approved under this section without regard to the provisions of this sentence.

PAYMENT TO STATES

SEC. 1003. [42 U.S.C. 1203] (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

[(1) Stricken.[1]]

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan[2], not counting so much of any expenditure with respect to any month

[1] P.L. 97-35, §2184(c)(2)(A), struck out paragraph (1), effective August 13, 1981.

[2] P.L. 97-35, §2184(c)(2)(B), struck out "(including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)", effective August 13, 1981.

as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of the remainder of such expenditures.[1]

[(4) Stricken.[2]]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall

[1] P.L. 97-35, §2353(e)(1)(A), amended paragraph (3) in its entirety, effective October 1, 1981.
[2] P.L. 97-35, §2353(e)(1)(B), struck out paragraph (4), effective October 1, 1981.

not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Division of Disbursement[1] of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amounts so certified.

[(c) Repealed.[2]]

OPERATION OF STATE PLANS

SEC. 1004. [42 U.S.C. 1204] In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1002(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1002(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

ADMINISTRATION

SEC. 1005. [42 U.S.C. 1205] There is hereby authorized to be appropriated for the fiscal year ending June 30, 1936, the sum of $30,000, for all necessary expenses of the Board in administering the provisions of this title.

DEFINITION

SEC. 1006. [42 U.S.C. 1206] For the purposes of this title, the term "aid to the blind" means money payments to[3] blind individuals who are needy, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy

[1] As in original.
[2] P.L. 97-35, §2353(e)(2), repealed subsection (c), effective October 1, 1981.
[3] P.L. 97-35, §2184(c)(3), struck out ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of,", effective August 13, 1981.

individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1002 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the blind to be paid (and in conjunction with other income and resources), meet all the need[1] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of 90 consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for 30 consecutive days in the case of such an individual who has maintained his residence in such State during such period or 90 consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

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[1] As in original. Should be "needs".

TITLE XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS[1] REVIEW[2]

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[1] As in original. Possibly should strike out "PROFESSIONAL STANDARDS" and substitute "PEER".

[2] Title XI of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare) and by the Department of Labor.

Title XI appears in the United States Code as §§1301-1320c-12, subchapter XI, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title XI are contained in chapter III, Title 20, in chapters I, II, and IV, Title 42, and in subtitle A and chapters I, III, and XIII, Title 45, Code of Federal Regulations. Regulations of the Secretary of Labor relating to Title XI are contained in chapter V, Title 20, and subtitle A, Title 29, Code of Federal Regulations.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

[3] This table of contents does not appear in the law.

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PART A—GENERAL PROVISIONS[1]

DEFINITIONS

SEC. 1101. [42 U.S.C. 1301] (a) When used in this Act—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in titles IV, V, VII, XI, and XIX includes the Virgin Islands and Guam. Such term when used in titles III, IX, and XII also includes the Virgin Islands. Such term when used in title V and in part B of this title also includes American Samoa, the Northern Mariana Islands,[2] and the Trust Territory of the Pacific Islands. Such term when used in title XIX also includes the Northern Mariana Islands and American Samoa[3].[4] In the case of Puerto Rico, the Virgin Islands, and Guam, titles I, X, and XIV, and title XVI (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972[5]) shall continue to apply, and the term "State" when used in such titles (but not in title XVI as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam. Such term when used in title XX also includes the Virgin Islands, Guam, and the Northern Mariana Islands[6].[7]

(2) The term "United States" when used in a geographical sense means, except when otherwise provided, the States.

(3) The term "person" means an individual, a trust or estate, a partnership, or a corporation.

(4) The term "corporation" includes associations, joint-stock companies, and insurance companies.

(5) The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(6) The term "Secretary", except when the context otherwise requires, means the Secretary of Health, Education, and Welfare[8].

(7) The terms "physician" and "medical care" and "hospitalization" include osteopathic practitioners or the services of osteopathic practitioners and hospitals within the scope of their practice as defined by State law.

(8)(A) The "Federal percentage" for any State (other than Puerto Rico, the Virgin Islands, and Guam) shall be 100 per centum less the State percentage; and the State percentage shall

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[1] See P.L. 84-885, "State Department Basic Authorities Act of 1956", §33, with respect to evidence of United States citizenship.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency.

[2] P.L. 97-35, §2162(a)(1)(1)(sic), inserted ", the Northern Mariana Islands,", effective with respect to fiscal years beginning with fiscal year 1982.

[3] P.L. 97-248, §136(a), inserted "and American Samoa", effective October 1, 1982.

[4] P.L. 97-35, §2162(a)(1)(2)(sic), added the preceding sentence, effective with respect to fiscal years beginning with fiscal year 1982.

[5] P.L. 92-603, §301, added Title XVI, Supplemental Security Income for the Aged, Blind, and Disabled.

[6] P.L. 97-248, §160(c), struck out "American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands" and substituted "Guam, and the Northern Mariana Islands", effective October 1, 1981.

[7] P.L. 97-35, §2352(b), added the preceding sentence, effective October 1, 1981.

[8] The Secretary of Health, Education, and Welfare was redesignated, effective May 4, 1980, as the Secretary of Health and Human Services under section 509 of the "Department of Education Organization Act" (P.L. 96-88, 93 Stat. 695).

be that percentage which bears the same ratio to 50 per centum as the square of the per capita income of such State bears to the square of the per capita income of the United States; except that the Federal percentage shall in no case be less than 50 per centum or more than 65 per centum.

(B) The Federal percentage for each State (other than Puerto Rico, the Virgin Islands, and Guam) shall be promulgated by the Secretary between October 1 and November 30 of each even-numbered year, on the basis of the average per capita income of each State and of the United States for the three most recent calendar years for which satisfactory data are available from the Department of Commerce. Such promulgation shall be conclusive for each of the eight quarters in the period beginning October 1 next succeeding such promulgation: *Provided,* That the Secretary shall promulgate such percentages as soon as possible after the enactment of the Social Security Amendments of 1958[1], which promulgation shall be conclusive for each of the eleven quarters in the period beginning October 1, 1958, and ending with the close of June 30, 1961.

(C) The term "United States" means (but only for purposes of subparagraphs (A) and (B) of this paragraph) the fifty States and the District of Columbia.

(D) Promulgations made before satisfactory data are available from the Department of Commerce for a full year on the per capita income of Alaska shall prescribe a Federal percentage for Alaska of 50 per centum and, for purposes of such promulgations, Alaska shall not be included as part of the "United States". Promulgations made thereafter but before per capita income data for Alaska for a full three-year period are available from the Department of Commerce shall be based on satisfactory data available therefrom for Alaska for such one full year or, when such data are available for a two-year period, for such two years.

(9) The term "shared health facility" means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto,

[1] August 28, 1958 [P.L. 85-840; 72 Stat. 1013].

on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under titles XVIII[1] and XIX in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1861(u) of this Act), a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act[2]), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1954[3], or any public entity.

(b) The terms "includes" and "including" when used in a definition contained in this Act shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) Whenever under this Act or any Act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for the purposes of this Act the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

(d) Nothing in this Act shall be construed as authorizing any Federal official, agent, or representative, in carrying out any of the provisions of this Act, to take charge of any child over the objection of either of the parents of such child, or of the person standing in loco parentis to such child.

RULES AND REGULATIONS[4]

SEC. 1102. [42 U.S.C. 1302] The Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, respectively, shall make and publish such rules and regulations, not inconsistent with this Act, as may be necessary to the efficient administration of the functions with which each is charged under this Act.

SEPARABILITY

SEC. 1103. [42 U.S.C. 1303] If any provision of this Act, or the application thereof to any person or circumstance, is held invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

RESERVATION OF POWER

SEC. 1104. [42 U.S.C. 1304] The right to alter, amend, or repeal any provision of this Act is hereby reserved to the Congress.

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[1] P.L. 97-35, §2193(c)(2), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[2] P.L. 78-410.

[3] P.L. 83-591.

[4] See P.L. 94-437, "Indian Health Care Improvement Act", §702(b), with respect to regulations applicable to Indians.

SHORT TITLE

SEC. 1105. [42 U.S.C. 1305] This Act may be cited as the "Social Security Act".

DISCLOSURE OF INFORMATION IN POSSESSION OF AGENCY[1]

SEC. 1106. [42 U.S.C. 1306] (a) No disclosure of any return or portion of a return (including information returns and other written statements) filed with the Commissioner of Internal Revenue under title VIII of the Social Security Act or under subchapter E of chapter 1 or subchapter A of chapter 9 of the Internal Revenue Code[2], or under regulations made under authority thereof, which has been transmitted to the Administrator by the Commissioner of Internal Revenue, or of any file, record, report, or other paper, or any information, obtained at any time by the Administrator or by any officer or employee of the Federal Security Agency in the course of discharging the duties of the Administrator under this Act, and no disclosure of any such file, record, report, or other paper, or information, obtained at any time by any person from the Administrator or from any officer or employee of the Federal Security Agency, shall be made except as the Administrator may by regulations prescribe and except as otherwise provided by Federal law[3]. Any person who shall violate any provision of this section shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Requests for information, disclosure of which is authorized by regulations prescribed pursuant to subsection (a) of this section, and requests for services, may, subject to such limitations as may be prescribed by the Secretary to avoid undue interference with his functions under this Act, be complied with if the agency, person, or organization making the request agrees to pay for the information or

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[1]Reorganization Plan No. 2 of 1949 transferred to the Secretary of Labor certain duties and functions of the Federal Security Administrator (now the Secretary of Health and Human Services), with respect to employment services, unemployment compensation, and the Bureau of Employment Security (which was also transferred to the Department of Labor from the Federal Security Administration). Reorganization Plan No. 19 of 1950 transferred the Bureau of Employees' Compensation from the Federal Security Administration (now the Department of Health and Human Services) to the Department of Labor and provided for the transfer from the Federal Security Administrator to the Secretary of Labor of certain functions and duties with respect to the Bureau of Employees' Compensation and with respect to employees' compensation, including workmen's compensation. In effect, with respect to these functions and duties, the provisions of this section of the Social Security Act also apply to the Secretary of Labor.

See 5 U.S.C. 552(b)(3) with respect to certain limitations on §1106.

See 5 U.S.C. 8347(m)(3) with respect to disclosure of information to the Office of Personnel Management.

See P.L. 83-591, "Internal Revenue Code of 1954", §6103(l)(1), with respect to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration; §7213(a)(1), with respect to the penalty for unauthorized disclosure of that tax return information; and §7217, with respect to civil damages for unauthorized disclosure of that tax information.

See P.L. 88-525, "Food Stamp Act of 1977", §11(e)(19)(B)(i), with respect to disclosure of information available under §6103(l)(7) of P.L. 83-591, "Internal Revenue Code of 1954", for use in determining eligibility for food stamps.

See P.L. 97-253, "Omnibus Budget Reconciliation Act of 1982", §§301(d)(5) and 307(f), with respect to supplying information about civil service annuitants.

See P.L. 98-135, "Federal Supplemental Compensation Amendments of 1983", §206, with respect to disclosure of information to prevent payments of unemployment compensation to retirees and prisoners.

[2]P.L. 76-1. Should refer, instead, to P.L. 83-591, "Internal Revenue Code of 1954", Subtitles A and C. See Subtitle A, p. 803.

[3]P.L. 97-35, §2207(1), struck out "provided in part D of title IV of this Act" and substituted "otherwise provided by Federal law", effective August 13, 1981.

services requested in such amount, if any (not exceeding the cost of furnishing the information or services), as may be determined by the Secretary. Payments for information or services furnished pursuant to this section shall be made in advance or by way of reimbursement, as may be requested by the Secretary, and shall be deposited in the Treasury as a special deposit to be used to reimburse the appropriations (including authorizations to make expenditures from the Federal Old-Age and Survivors Insurance Trust Fund, the Federal Disability Insurance Trust Fund, the Federal Hospital Insurance Trust Fund, and the Federal Supplementary Medical Insurance Trust Fund) for the unit or units of the Department of Health, Education, and Welfare which furnished the information or services. Notwithstanding the preceding provisions of this subsection, requests for information made pursuant to the provisions of part D of title IV of this Act for the purpose of using Federal records for locating parents shall be complied with and the cost incurred in providing such information shall be paid for as provided in such part D of title IV.[1]

(c) Notwithstanding sections 552 and 552a of title 5, United States Code, or any other provision of law, whenever the Secretary determines that a request for information is made in order to assist a party in interest (as defined in section 3 of the Employee Retirement Income Security Act of 1974[2] (29 U.S.C. 1002)) with respect to the administration of an employee benefit plan (as so defined), or is made for any other purpose not directly related to the administration of the program or programs under this Act to which such information relates, the Secretary may require the requester to pay the full cost, as determined by the Secretary, of providing such information.[3]

(d) Notwithstanding any other provision of this section the Secretary shall make available to each State agency operating a program under title XIX and shall, subject to the limitations contained in subsection (e), make available for public inspection in readily accessible form and fashion, the following official reports (not including, however, references to any internal tolerance rules and practices that may be contained therein, internal working papers or other informal memoranda) dealing with the operation of the health programs established by titles XVIII and XIX—

(1) individual contractor performance reviews and other formal evaluations of the performance of carriers, intermediaries, and State agencies, including the reports of follow-up reviews;

(2) comparative evaluations of the performance of such contractors, including comparisons of either overall performance or of any particular aspect of contractor operation; and

(3) program validation survey reports and other formal evaluations of the performance of providers of services, including the reports of follow-up reviews, except that such reports shall not identify individual patients, individual health care practitioners, or other individuals.

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[1] 38 U.S.C. 3006 requires all Federal agencies to provide the Veterans' Administration with all information it may require for purposes of administering veterans' programs.

P.L. 94-505, §201, created the Office of Inspector General within this Department and sets forth duties and responsibilities, including authority over audits and investigations dealing with Departmental programs and operations, effective October 15, 1976.

[2] P.L. 93-406.

[3] P.L. 97-35, §2207(2), added this subsection, effective August 13, 1981.

(e) No report described in subsection (d) shall be made public by the Secretary or the State title XIX agency until the contractor or provider of services whose performance is being evaluated has had a reasonable opportunity (not exceeding 60 days) to review such report and to offer comments pertinent parts of which may be incorporated in the public report; nor shall the Secretary be required to include in any such report information with respect to any deficiency (or improper practice or procedures) which is known by the Secretary to have been fully corrected, within 60 days of the date such deficiency was first brought to the attention of such contractor or provider of services, as the case may be.

PENALTY FOR FRAUD[1]

SEC. 1107. [42 U.S.C. 1307] (a) Whoever, with the intent to defraud any person, shall make or cause to be made any false representation concerning the requirements of this Act, subchapter E of chapter 1 or subchapter A, C, or E of chapter 9 of the Internal Revenue Code[2], or of any rules or regulations issued thereunder, knowing such representations to be false, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

(b) Whoever, with the intent to elicit information as to the date of birth, employment, wages, or benefits of any individual (1) falsely represents to the Secretary of Health, Education, and Welfare that he is such individual, or the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or the duly authorized agent of such individual, or of the wife, husband, widow, widower, former wife divorced, child, or parent of such individual, or (2) falsely represents to any person that he is an employee or agent of the United States, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $1,000, or by imprisonment not exceeding one year, or both.

LIMITATION ON PAYMENTS TO PUERTO RICO, THE VIRGIN ISLANDS, AND GUAM

SEC. 1108. [42 U.S.C. 1308] (a) The total amount certified by the Secretary of Health and Human Services under titles[3] I, X, XIV, and XVI, and under parts A and E of title IV (exclusive of any amounts on account of services and items to which subsection (b) applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) $12,500,000 with respect to the fiscal year 1968,

(B) $15,000,000 with respect to the fiscal year 1969,

(C) $18,000,000 with respect to the fiscal year 1970,

(D) $21,000,000 with respect to the fiscal year 1971,

(E) $24,000,000 with respect to each of the fiscal years 1972 through 1978, or

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[1] See 18 U.S.C. 1028, 1738 with respect to penalties relating to use of identification documents.

[2] P.L. 76-1. Should refer, instead, to P.L. 83-591, "Internal Revenue Code of 1954".

[3] P.L. 97-35, §2353(f), struck out "Except as provided in section 2002(a)(2)(C), the total amount certified by the Secretary of Health, Education, and Welfare under title" and substituted "The total amount certified by the Secretary of Health and Human Services under titles", effective October 1, 1981.

(F) $72,000,000 with respect to the fiscal year 1979 and each fiscal year thereafter;

(2) for payment to the Virgin Islands shall not exceed—

(A) $425,000 with respect to the fiscal year 1968,

(B) $500,000 with respect to the fiscal year 1969,

(C) $600,000 with respect to the fiscal year 1970,

(D) $700,000 with respect to the fiscal year 1971,

(E) $800,000 with respect to each of the fiscal years 1972 through 1978, or

(F) $2,400,000 with respect to the fiscal year 1979 and each fiscal year thereafter;

(3) for payment to Guam shall not exceed—

(A) $575,000 with respect to the fiscal year 1968,

(B) $690,000 with respect to the fiscal year 1969,

(C) $825,000 with respect to the fiscal year 1970,

(D) $960,000 with respect to the fiscal year 1971,

(E) $1,100,000 with respect to each of the fiscal years 1972 through 1978, or

(F) $3,300,000 with respect to the fiscal year 1979 and each fiscal year thereafter.

Each jurisdiction specified in this subsection may use in its program under title XX any sums available to it under this subsection which are not needed to carry out the programs specified in this subsection.[1]

(b) The total amount certified by the Secretary under part A of title IV, on account of family planning services and services provided under section 402(a)(19) with respect to any fiscal year—

(1) for payment to Puerto Rico shall not exceed $2,000,000,

(2) for payment to the Virgin Islands shall not exceed $65,000, and

(3) for payment to Guam shall not exceed $90,000.

(c) The total amount certified by the Secretary under title XIX with respect to a fiscal year for payment to—

(1) Puerto Rico shall not exceed $45,000,000,

(2) the Virgin Islands shall not exceed $1,500,000,

(3) Guam shall not exceed $1,400,000,

(4) the Northern Mariana Islands shall not exceed $350,000,[2] and

(5) American Samoa shall not exceed $750,000.[3]

(d) Notwithstanding the provisions of section 421[4], and until such time as the Congress may by appropriation or other law otherwise provide, the Secretary shall, in lieu of the initial allotment specified in such sections, allot such smaller amounts to Guam, American Samoa, and the Trust Territory of the Pacific Islands as he may deem appropriate.

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[1] P.L. 97-248, §160(a), added the preceding sentence to subsection (a), effective October 1, 1981.

[2] P.L. 97-35, §2162(b)(1), amended subsection (c) in its entirety, effective with respect to fiscal years beginning with fiscal year 1982.

[3] P.L. 97-248, §136(b)(3), added paragraph (5), effective October 1, 1982.

[4] P.L. 97-35, §2193(c)(1), struck out "section 502(a) and 512(a) of this Act, and the provisions of sections 421, 503(1), and 504(1) of this Act as amended by the Social Security Amendments of 1967" and substituted "section 421". Executed as if P.L. 97-35, §2193(c)(1), reads "sections 502(a)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

AMOUNTS DISREGARDED NOT TO BE TAKEN INTO ACCOUNT IN DETERMINING ELIGIBILITY OF OTHER INDIVIDUALS

SEC. 1109. [42 U.S.C. 1309] Any amount which is disregarded (or set aside for future needs) in determining the eligibility of and amount of the aid or assistance for any individual under a State plan approved under title I, X, XIV, XVI, or XIX, or part A of title IV, shall not be taken into consideration in determining the eligibility of and amount of aid or assistance for any other individual under a State plan approved under any other of such titles.

COOPERATIVE RESEARCH OR DEMONSTRATION PROJECTS[1]

SEC. 1110. [42 U.S.C. 1310] (a)(1) There are hereby authorized to be appropriated for the fiscal year ending June 30, 1957, $5,000,000 and for each fiscal year thereafter such sums as the Congress may determine for (A) making grants to States and public and other nonprofit organizations and agencies for paying part of the cost of research or demonstration projects such as those relating to the prevention and reduction of dependency, or which will aid in effecting coordination of planning between private and public welfare agencies or which will help improve the administration and effectiveness of programs carried on or assisted under the Social Security Act and programs related thereto, and (B) making contracts or jointly financed cooperative arrangements with States and public and other organizations and agencies for the conduct of research or demonstration projects relating to such matters.

(2) No contract or jointly financed cooperative arrangement shall be entered into, and no grant shall be made, under paragraph (1), until the Secretary obtains the advice and recommendations of specialists who are competent to evaluate the proposed projects as to soundness of their design, the possibilities of securing productive results, the adequacy of resources to conduct the proposed research or demonstrations, and their relationship to other similar research or demonstrations already completed or in process.

(3) Grants and payments under contracts or cooperative arrangements under paragraph (1) may be made either in advance or by way of reimbursement, as may be determined by the Secretary; and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purposes of this subsection.

(b)(1) The Secretary is authorized to waive any of the requirements, conditions, or limitations of title XVI (or to waive them only for specified purposes, or to impose additional requirements, conditions, or limitations) to such extent and for such period as he finds necessary to carry out one or more experimental, pilot, or demonstration projects which, in his judgment, are likely to assist in promoting the objectives or facilitate the administration of such title. Any costs for benefits under or administration of any such project (including planning for the project and the review and evaluation of the project and its results), in excess of those that would have been incurred without regard to the project, shall be met by the Secretary from amounts available to him for this purpose from appropriations made to carry out such title. The costs of any such project which is carried out in coordination with one or more related projects under other titles of this Act shall be allocated among the appropriations avail-

[1] See P.L. 96-265, "Social Security Disability Amendments of 1980", §505, with respect to authority for demonstration projects and requirements for reports to Congress.

able for such projects and any Trust Funds involved, in a manner determined by the Secretary, taking into consideration the programs (or types of benefit) to which the project (or part of a project) is most closely related or which the project (or part of a project) is intended to benefit. If, in order to carry out a project under this subsection, the Secretary requests a State to make supplementary payments (or makes them himself pursuant to an agreement under section 1616), or to provide medical assistance under its plan approved under title XIX, to individuals who are not eligible therefor, or in amounts or under circumstances in which the State does not make such payments or provide such medical assistance, the Secretary shall reimburse such State for the non-Federal share of such payments or assistance from amounts appropriated to carry out title XVI.

(2) With respect to the participation of recipients of supplemental security income benefits in experimental, pilot, or demonstration projects under this subsection—

(A) the Secretary is not authorized to carry out any project that would result in a substantial reduction in any individual's total income and resources as a result of his or her participation in the project;

(B) the Secretary may not require any individual to participate in a project; and he shall assure (i) that the voluntary participation of individuals in any project is obtained through informed written consent which satisfies the requirements for informed consent established by the Secretary for use in any experimental, pilot, or demonstration project in which human subjects are at risk, and (ii) that any individual's voluntary agreement to participate in any project may be revoked by such individual at any time;

(C) the Secretary shall, to the extent feasible and appropriate, include recipients who are under age 18 as well as adult recipients; and

(D) the Secretary shall include in the projects carried out under this section such experimental, pilot, or demonstration projects as may be necessary to ascertain the feasibility of treating alcoholics and drug addicts to prevent the onset of irreversible medical conditions which may result in permanent disability, including programs in residential care treatment centers.

PUBLIC ASSISTANCE PAYMENTS TO LEGAL REPRESENTATIVES

SEC. 1111. [42 U.S.C. 1311] For purposes of titles I, X, XIV, and XVI, and part A of title IV, payments on behalf of an individual, made to another person who has been judicially appointed, under the law of the State in which such individual resides, as legal representative of such individual for the purpose of receiving and managing such payments (whether or not he is such individual's legal representative for other purposes), shall be regarded as money payments to such individual.

MEDICAL CARE GUIDES AND REPORTS FOR PUBLIC ASSISTANCE AND MEDICAL ASSISTANCE

SEC. 1112. [42 U.S.C. 1312] In order to assist the States to extend the scope and content, and improve the quality, of medical care and medical services for which payments are made to or on behalf of needy and low-income individuals under this Act and in order to promote better public understanding about medical care and medical assistance for needy and low-income individuals, the Secretary shall develop and revise from time to time guides or recommended standards as to the level, content, and quality of medical care and medical services for the use of the States in evaluating and improving their public assistance medical care programs and their programs of medical assistance; shall secure periodic reports from the States on items included in, and the quantity of, medical care and medical services for which expenditures under such programs are made; and shall from time to time publish data secured from these reports and other information necessary to carry out the purposes of this section.

ASSISTANCE FOR UNITED STATES CITIZENS RETURNED FROM FOREIGN COUNTRIES

SEC. 1113. [42 U.S.C. 1313] (a)(1) The Secretary is authorized to provide temporary assistance to citizens of the United States and to dependents of citizens of the United States, if they (A) are identified by the Department of State as having returned, or been brought, from a foreign country to the United States because of the destitution of the citizen of the United States or the illness of such citizen or any of his dependents or because of war, threat of war, invasion, or similar crisis, and (B) are without available resources.

(2) Except in such cases or classes of cases as are set forth in regulations of the Secretary, provision shall be made for reimbursement to the United States by the recipients of the temporary assistance to cover the cost thereof.

(3) The Secretary may provide assistance under paragraph (1) directly or through utilization of the services and facilities of appropriate public or private agencies and organizations, in accordance with agreements providing for payment, in advance or by way of reimbursement, as may be determined by the Secretary, of the cost thereof. Such cost shall be determined by such statistical, sampling, or other method as may be provided in the agreement.

(b) The Secretary is authorized to develop plans and make arrangements for provision of temporary assistance within the United States to individuals specified in subsection (a)(1). Such plans shall be developed and such arrangements shall be made after consultation with the Secretary of State, the Attorney General, and the Secretary of Defense. To the extent feasible, assistance provided under subsection (a) shall be provided in accordance with the plans developed pursuant to this subsection, as modified from time to time by the Secretary.

(c) For purposes of this section, the term "temporary assistance" means money payments, medical care, temporary billeting, transportation, and other goods and services necessary for the health or welfare of individuals (including guidance, counseling, and other welfare services) furnished to them within the United States upon their arrival in the United States and for such period after their arrival, not exceeding ninety days, as may be provided in regulations

of the Secretary; except that assistance under this section may be furnished beyond such ninety-day period in the case of any citizen or dependent upon a finding by the Secretary that the circumstances involved necessitate or justify the furnishing of assistance beyond such period in that particular case.

(d) The total amount of temporary assistance provided under this section shall not exceed—

(1) $8,000,000 during the fiscal years ending June 30, 1975, and June 30, 1976, and the succeeding calendar quarter, or

(2) $300,000 during any fiscal year beginning on or after October 1, 1976.

APPOINTMENT OF ADVISORY COUNCIL AND OTHER ADVISORY GROUPS[1]

SEC. 1114. [42 U.S.C. 1314] (a) The Secretary shall, during 1964, appoint an Advisory Council on Public Welfare for the purpose of reviewing the administration of the public assistance and child welfare services programs for which funds are appropriated pursuant to this Act and making recommendations for improvement of such administration, and reviewing the status of and making recommendations with respect to the public assistance programs for which funds are so appropriated, especially in relation to the old-age, survivors, and disability insurance program, with respect to the fiscal capacities of the States and the Federal Government, and with respect to any other matters bearing on the amount and proportion of the Federal and State shares in the public assistance and child welfare services programs.

(b) The Council shall be appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive service and shall consist of twelve persons who shall, to the extent possible, be representatives of employers and employees in equal numbers, representatives of State or Federal agencies concerned with the administration or financing of the public assistance and child welfare services programs, representatives of nonprofit private organizations concerned with social welfare programs, other persons with special knowledge, experience, or qualifications with respect to such programs, and members of the public.

(c) The Council is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Council such secretarial, clerical, and other assistance and such pertinent data prepared by the Department of Health, Education, and Welfare as it may require to carry out such functions.

(d) The Council shall make a report of its findings and recommendations (including recommendations for changes in the provisions of the Social Security Act) to the Secretary, such report to be submitted not later than July 1, 1966, after which date such Council shall cease to exist.

(e) The Secretary shall also from time to time thereafter appoint an Advisory Council on Public Welfare, with the same functions and constituted in the same manner as prescribed for the Advisory Council in the preceding subsections of this section. Each Council so

[1]See P.L. 92-463, "Federal Advisory Committee Act", §§2-15, approved October 6, 1972, with respect to provisions governing the operations of advisory committees.

appointed shall report its findings and recommendations, as prescribed in subsection (d), not later than July 1 of the second year after the year in which it is appointed, after which date such Council shall cease to exist.

(f) The Secretary may also appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, such advisory committees as he may deem advisable to advise and consult with him in carrying out any of his functions under this Act. The Secretary shall report to the Congress annually on the number of such committees and on the membership and activities of each such committee.

(g) Members of the Council or of any advisory committee appointed under this section who are not regular full-time employees of the United States shall, while serving on business of the Council or any such committee, be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $75 per day, including travel time; and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.[1] for persons in Government service employed intermittently.

(h)(1) Any member of the Council or any advisory committee appointed under this Act, who is not a regular full-time employee of the United States, is hereby exempted, with respect to such appointment, from the operation of sections 281, 283, and 1914[2] of title 18 of the United States Code, and section 190 of the Revised Statutes[3] (5 U.S.C. 99), except as otherwise specified in paragraph (2) of this subsection.

(2) The exemption granted by paragraph (1) shall not extend—

(A) to the receipt or payment of salary in connection with the appointee's Government service from any source other than the employer of the appointee at the time of his appointment, or

(B) during the period of such appointment, to the prosecution or participation in the prosecution, by any person so appointed, of any claim against the Government involving any matter with which such person, during such period, is or was directly connected by reason of such appointment.

DEMONSTRATION PROJECTS

SEC. 1115. [42 U.S.C. 1315] (a) In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of title I, VI[4], X, XIV, XVI, or XIX[5], or part A of title IV, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 2, 402, 602[6], 1002, 1402, 1602, or 1902[7] as

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[1] As in original. Period should be a comma.

[2] P.L. 87-849, §2, repealed §§281, 283, and 1914; for present text, see 18 U.S.C. 203, 205, and 209.

[3] P.L. 87-849, §3, repealed §190 of the Revised Statutes (5 U.S.C. 99), effective January 21, 1963. For relevant present law, see 18 U.S.C. 207.

[4] As in original; title VI was repealed by P.L. 93-647, §3(b), effective October 1, 1975.

[5] P.L. 97-35, §2353(g)(1), struck out "XIX, or XX" and substituted "or XIX", effective October 1, 1981.

[6] As in original; section 602 was repealed by P.L. 93-647, §3(b), effective October 1, 1975.

[7] P.L. 97-35, §2353(g)(2), struck out "1902, 2002, 2003, or 2004" and substituted "or 1902", effective October 1, 1981.

the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 3, 403, 603[1], 1003, 1403, 1603, or 1903[2], as the case may be, and which are not included as part of the costs of projects under section 1110, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such title, or for administration of such State plan or plans,[3] as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such titles for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such titles and is not included as part of the cost of projects for purposes of section 1110.

(b)(1) In order to permit the States to achieve more efficient and effective use of funds for public assistance, to reduce dependency, and to improve the living conditions and increase the incomes of individuals who are recipients of public assistance, any State having an approved plan under part A of title IV may, subject to the provisions of this subsection, establish and conduct not more than three demonstration projects. In establishing and conducting any such project the State shall—

(A) provide that not more than one such project be conducted on a statewide basis;

(B) provide that in making arrangements for public service employment—

(i) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(ii) such project will not result in the displacement of employed workers,

(iii) each participant in such project shall be compensated for work performed by him at an hourly rate equal to the prevailing hourly wage for similar work in the locality where the participant performs such work (and, for purposes of this clause, benefits payable under the State's plan approved under part A of title IV of the family of which such participant is a member shall be regarded as compensation for work performed by such participant),

(iv) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant, and

(v) appropriate workmen's compensation protection is provided to all participants; and

(C) provide that participation in such project by any individual receiving aid to families with dependent children be voluntary.

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[1]As in original; section 603 was repealed by P.L. 93-647, §3(b), effective October 1, 1975.

[2]P.L. 97-35, §2353(g)(3)(A), struck out "1903, or 2002" and substituted "or 1903", effective October 1, 1981.

[3]P.L. 97-35, §2353(g)(3)(B), struck out "or expenditures with respect to which payment shall be made under section 2002,", effective October 1, 1981.

(2) Any State which establishes and conducts demonstration projects under this subsection may, subject to paragraph (3), with respect to any such project—

(A) waive, subject to paragraph (3), any or all of the requirements of sections 402(a)(1) (relating to statewide operation), 402(a)(3) (relating to administration by a single State agency), 402(a)(8) (relating to disregard of earned income), except that no such waiver of 402(a)(8) shall operate to waive any amount in excess of one-half of the earned income of any individual, and 402(a)(19) (relating to the work incentive program);

(B) subject to paragraph (4), use to cover the costs of the project such funds as are appropriated for payment to such State with respect to the assistance which is or would, except for participation in a project under this subsection, be payable to individuals participating in such projects under part A of title IV for any fiscal year in which such projects are conducted; and

(C) use such funds as are appropriated for payments to State under the State and Local Fiscal Assistance Act of 1972[1] for any fiscal year in which the project is conducted to cover so much of the costs of salaries for individuals participating in public service employment as is not covered through the use of funds made available under subparagraph (B).

(3)(A) Any State which wishes to establish and conduct demonstration projects under the provisions of this subsection shall submit an application to the Secretary in such form and containing such information as the Secretary may require. Whenever any State submits such an application to the Secretary, it shall at the same time issue public notice of that fact together with a general description of the project with respect to which the application is submitted, and shall invite comment thereon from interested parties and comments thereon may be submitted, within the 30-day period beginning with the date the application is submitted to the Secretary, to the State or the Secretary by such parties. The State shall also make copies of the application available for public inspection. The Secretary shall also immediately publish a summary of the proposed project, make copies of the application available for public inspection, and receive and consider comments submitted with respect to the application. A State shall be authorized to proceed with a project submitted under this subsection—

(i) when such application has been approved by the Secretary (which shall be no earlier than 30 days following the date the application is submitted to him), or

(ii) 60 days after the date on which such application is submitted to the Secretary unless, during such 60 day period, he denies the application.

(B) Notwithstanding the provisions of paragraph (2)(A), the Secretary may review any waiver made by a State under such paragraph. Upon a finding that any such waiver is inconsistent with the purposes of this subsection and the purposes of part A of title IV, the Secretary may disapprove such waiver. The project with respect to which any such disapproved waiver was made shall be terminated by such State not later than the last day of the month following the month in which such waiver was disapproved.

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[1] P.L. 97-258, §5(b), repealed the portion of P.L. 92-512, "State and Local Fiscal Assistance Act of 1972", apparently referred to here, effective September 13, 1982.

(4) Any amount payable to a State under section 403(a) on behalf of an individual participating in a project under this section shall not be increased by reason of the participation of such individual in any demonstration project conducted under this subsection over the amount which would be payable if such individual were receiving aid to families with dependent children and not participating in such project.

(5) Participation in a project established under this section shall not be considered to constitute employment for purposes of any finding with respect to "unemployment" as that term is used in section 407.

(6) Any demonstration project established and conducted pursuant to the provisions of this subsection shall be conducted for not longer than two years. All demonstration projects established and conducted pursuant to the provisions of this subsection shall be terminated not later than September 30, 1980.

ADMINISTRATIVE AND JUDICIAL REVIEW OF CERTAIN ADMINISTRATIVE DETERMINATIONS

SEC. 1116. [42 U.S.C. 1316] (a)(1) Whenever a State plan is submitted to the Secretary by a State for approval under title I, VI[1], X, XIV, XVI, or XIX[2], or part A of title IV, he shall not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such title. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such title. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 4, 404, 604[3], 1004, 1404, 1604, or 1904[4] may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of title 28, United States Code.

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[1] As in original; title VI was repealed by P.L. 93-647, §3(b), effective October 1, 1975.

[2] P.L. 97-35, §2353(h)(1), struck out "XIX, or XX" and substituted "or XIX", effective October 1, 1981. Executed as if P.L. 97-35, §2353(h)(1), reads "XIX or XX" instead of "XIX, or XX".

[3] As in original; section 604 was repealed by P.L. 93-647, §3(b), effective October 1, 1975.

[4] P.L. 97-35, §2353(h)(2), struck out "1904, or 2003" and substituted "or 1904", effective October 1, 1981.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(b) For the purposes of subsection (a), any amendment of a State plan approved under title I, VI[1], X, XIV, XVI, or XIX[2], or part A of title IV, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) shall not be stayed pending reconsideration, but in the event that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under title I, VI[3], X, XIV, XVI, or or[4] XIX[5], or part A of title IV, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

[SEC. 1117. Repealed.[6]]

ALTERNATIVE FEDERAL PAYMENT WITH RESPECT TO PUBLIC ASSISTANCE EXPENDITURES

SEC. 1118. [42 U.S.C. 1318] In the case of any State which has in effect a plan approved under title XIX for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 3(a), 403(a), 1003(a), 1403(a), and 1603(a) shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1905), instead of the percentages provided under each such section, to the expenditures under its State plans approved under titles I, X, XIV, and XVI, and part A of title IV, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of

[1] As in original; title VI was repealed by P.L. 93-647, §3(b), effective October 1, 1975.
[2] P.L. 97-35, §2353(h)(1), struck out "XIX, or XX" and substituted "or XIX", effective October 1, 1981. Executed as if P.L. 97-35, §2353(h)(1), reads "XIX or XX" instead of "XIX, or XX".
[3] As in original; title VI was repealed by P.L. 93-647, §3(b), effective October 1, 1975.
[4] As in original. One "or" should be stricken.
[5] P.L. 97-35, §2353(h)(3), struck out "XIX, XX" and substituted "or XIX", effective October 1, 1981.
[6] P.L. 90-248, §221(d); 81 Stat. 900.

the preceding sentence, the term "Federal medical assistance percentage" shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum.

FEDERAL PARTICIPATION IN PAYMENTS FOR REPAIRS TO HOME OWNED BY RECIPIENT OF AID OR ASSISTANCE

SEC. 1119. [42 U.S.C. 1319] In the case of an expenditure for repairing the home owned by an individual who is receiving aid or assistance, other than medical assistance to the aged, under a State plan approved under title I, X, XIV, or XVI, or part A of title IV if—

(1) the State agency or local agency administering the plan approved under such title has made a finding (prior to making such expenditure) that (A) such home is so defective that continued occupancy is unwarranted, (B) unless repairs are made to such home, rental quarters will be necessary for such individual, and (C) the cost of rental quarters to take care of the needs of such individual (including his spouse living with him in such home and any other individual whose needs were taken into account in determining the need of such individual) would exceed (over such time as the Secretary may specify) the cost of repairs needed to make such home habitable together with other costs attributable to continued occupancy of such home, and

(2) no such expenditures were made for repairing such home pursuant to any prior finding under this section,

the amount paid to any such State for any quarter under section 3(a), 403(a), 1003(a), 1403(a), or 1603(a) shall be increased by 50 per centum of such expenditures, except that the excess above $500 expended with respect to any one home shall not be included in determining such expenditures.

APPROVAL OF CERTAIN PROJECTS

SEC. 1120. [42 U.S.C. 1320][1] No payment shall be made under this Act with respect to any experimental, pilot, demonstration, or other project all or any part of which is wholly financed with Federal funds made available under this Act (without any State, local, or other non-Federal financial participation) unless such project shall have been personally approved by the Secretary or Under Secretary of Health, Education, and Welfare.[2]

UNIFORM REPORTING SYSTEMS FOR HEALTH SERVICES FACILITIES AND ORGANIZATIONS

SEC. 1121. [42 U.S.C. 1320a] (a) For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this Act, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

[1] P.L. 97-375, §107(a), struck out "(a)", effective December 21, 1982.
[2] P.L. 97-375, §107(a), struck out subsection (b), effective December 21, 1982.

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 306(e)(1) of the Public Health Service Act[1]. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) The Secretary shall—

(1) monitor the operation of the systems established under subsection (a);

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 1515 of the Public Health Service Act[2]) and State health planning and development agencies (designated under section 1521 of such Act[3]), as may be necessary to carry out such agencies' and organizations' functions.

LIMITATION ON FEDERAL PARTICIPATION FOR CAPITAL EXPENDITURES

SEC. 1122. [42 U.S.C. 1320a-1] (a) The purpose of this section is to assure that Federal funds appropriated under titles XVIII and XIX[4] are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such titles and that, to the extent possible, reimbursement under such titles shall support planning activities with respect to health services and facilities in the various States.

(b) The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to

[1] P.L. 78-410.
[2] P.L. 78-410.
[3] P.L. 78-410.
[4] P.L. 97-35, §2193(c)(3)(A), struck out "V, XVIII, and XIX" and substituted "XVIII and XIX". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1982", §2194, p. 784.

do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities.[1]

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B), and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act[2] (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963[3]) to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

(c) The Secretary shall pay any such State from the general fund in the Treasury[4], in advance or by way of reimbursement as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (b).

(d)(1) Except as provided in paragraph (2), if the Secretary determines that—

(A) neither the planning agency designated in the agreement described in subsection (b) nor an agency described in clause (ii) of subparagraph (B) of this paragraph had been given notice of any proposed capital expenditure (in accordance with such procedure or in such detail as may be required by such agency) at least 60 days prior to obligation for such expenditure; or

(B)(i) the planning agency so designated or an agency so described had received such timely notice of the intention to make such capital expenditure and had, within a reasonable period after receiving such notice and prior to obligation for such expenditure, notified the person proposing such expenditure that the expenditure would not be in conformity with the standards, criteria, or plans developed by such agency or any other agency

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[1] As in original. Period should be ",".
[2] P.L. 78-410.
[3] P.L. 88-164.
[4] P.L. 98-21, §607(a), struck out "Federal Hospital Insurance Trust Fund" and substituted "general fund in the Treasury", effective April 20, 1983.

described in clause (ii) for adequate health care facilities in such State or in the area for which such other agency has responsibility, and

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b)—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act[1] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act[2] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under titles XVIII[3] and XIX with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under titles XVIII[4] and XIX, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i), determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation or expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of title XVIII or XIX[5], he shall not exclude such expenses pursuant to

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[1] P.L. 78-410.

[2] P.L. 78-410.

[3] P.L. 97-35, §2193(c)(3)(A), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[4] P.L. 97-35, §2193(c)(3)(A), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[5] P.L. 97-35, §2193(c)(3)(B), struck out "V, XVIII, or X" and substituted "XVIII or XIX". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

P.L. 97-248, §137(a)(5), amended P.L. 97-35, §2193(c)(3)(B), by striking out "X" and substituting

paragraph (1).

(e) Where a person obtains under lease or comparable arrangement any facility or part thereof, or equipment for a facility, which would have been subject to an exclusion under subsection (d) if the person had acquired it by purchase, the Secretary shall (1) in computing such person's rental expense in determining the Federal payments to be made under titles XVIII[1] and XIX with respect to services furnished in such facility, deduct the amount which in his judgment is a reasonable equivalent of the amount that would have been excluded if the person had acquired such facility or such equipment by purchase, and (2) in computing such person's return on equity capital deduct any amount deposited under the terms of the lease or comparable arrangement.

(f) Any person dissatisfied with a determination by the Secretary under this section may within six months following notification of such determination request the Secretary to reconsider such determination. A determination by the Secretary under this section shall not be subject to administrative or judicial review.

(g) For the purposes of this section, a "capital expenditure" is an expenditure which, under generally accepted accounting principles, is not properly chargeable as an expense of operation and maintenance and which (1) exceeds $600,000 (or such lesser amount as the State may establish)[2], (2) changes the bed capacity of the facility with respect to which such expenditure is made, or (3) substantially changes the services of the facility with respect to which such expenditure is made. For purposes of clause (1) of the preceding sentence, the cost of the studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of the plant and equipment with respect to which such expenditure is made shall be included in determining whether such expenditure exceeds the dollar amount specified in clause (1)[3].

(h) The provisions of this section shall not apply to Christian Science sanatoriums operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

(i)(1) The Secretary shall establish a national advisory council, or designate an appropriate existing national advisory council, to advise and assist him in the preparation of general regulations to carry out the purposes of this section and on policy matters arising in the administration of this section, including the coordination of activities under this section with those under other parts of this Act or under other Federal or federally assisted health programs.

(2) The Secretary shall make appropriate provision for consultation between and coordination of the work of the advisory council established or designated under paragraph (1) and the Federal Hospital Council, the National Advisory Health Council, the Health Insurance Benefits Advisory Council, and other appropriate national advisory councils with respect to matters bearing on the purposes

"XIX", effective as if it had been included originally in P.L. 97-35, §2193(c)(3)(B).

[1]P.L. 97-35, §2193(c)(3)(A), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[2]P.L. 98-21, §607(b)(1)(A), struck out "$100,000" and substituted "$600,000 (or such lesser amount as the State may establish)", effective April 20, 1983.

[3]P.L. 98-21, §607(b)(1)(B), struck out "$100,000" and substituted "the dollar amount specified in clause (1)", effective April 20, 1983.

and administration of this section and the coordination of activities under this section with related Federal health programs.

(3) If an advisory council is established by the Secretary under paragraph (1), it shall be composed of members who are not otherwise in the regular full-time employ of the United States, and who shall be appointed by the Secretary without regard to the civil service laws from among leaders in the fields of the fundamental sciences, the medical sciences, and the organization, delivery, and financing of health care, and persons who are State or local officials or are active in community affairs or public or civic affairs or who are representative of minority groups. Members of such advisory council, while attending meetings of the council or otherwise serving on business of the council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the maximum rate specified at the time of such service for grade GS-18 in section 5332 of title 5, United States Code, including traveltime, and while away from their homes or regular places of business they may also be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b)[1] of such title 5 for persons in the Government service employed intermittently.

(j) A capital expenditure made by or on behalf of a health care facility shall not be subject to review pursuant to this section if 75 percent of the patients who can reasonably be expected to use the service with respect to which the capital expenditure is made will be individuals enrolled in an eligible organization as defined in section 1876(b), and if the Secretary determines that such capital expenditure is for services and facilities which are needed by such organization in order to operate efficiently and economically and which are not otherwise readily accessible to such organization because—

(1) the facilities do not provide common services at the same site (as usually provided by the organization),

(2) the facilities are not available under a contract of reasonable duration,

(3) full and equal medical staff privileges in the facilities are not available,

(4) arrangements with such facilities are not administratively feasible, or

(5) the purchase of such services is more costly than if the organization provided the services directly.[2]

PROGRAM FOR DETERMINING QUALIFICATIONS FOR CERTAIN HEALTH CARE PERSONNEL

SEC. 1123. [42 U.S.C. 1320a-2] (a) The Secretary, in carrying out his functions relating to the qualifications for health care personnel under title XVIII, shall develop (in consultation with appropriate professional health organizations and State health and licensure agencies) and conduct (in conjunction with State health and licensure agencies) until September 30, 1983[3], a program designed to determine the proficiency of individuals (who do not otherwise meet the formal educational, professional membership, or other specific criteria estab-

[1] As in original. There is no longer a subsection (b) to section 5703 of title 5, U.S. Code.
[2] P.L. 98-21, §607(c), added subsection (j), effective April 20, 1983.
[3] P.L. 97-248, §126, struck out "December 31, 1981" and substituted "September 30, 1983", effective September 3, 1982.

lished for determining the qualifications of practical nurses, therapists, laboratory technicians, and technologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists) to perform the duties and functions of practical nurses, therapists, laboratory technicians, technologists, and cytotechnologists, X-ray technicians, psychiatric technicians, or other health care technicians and technologists. Such program shall include (but not be limited to) the employment of procedures for the formal testing of the proficiency of individuals. In the conduct of such program, no individual who otherwise meets the proficiency requirements for any health care specialty shall be denied a satisfactory proficiency rating solely because of his failure to meet formal educational or professional membership requirements.

(b) If any individual has been determined, under the program established pursuant to subsection (a), to be qualified to perform the duties and functions of any health care specialty, no person or provider utilizing the services of such individual to perform such duties and functions shall be denied payment, under title XVIII or under any State plan approved under title XIX, for any health care services provided by such person on the grounds that such individual is not qualified to perform such duties and functions.

DISCLOSURE OF OWNERSHIP AND RELATED INFORMATION[1]

SEC. 1124. [42 U.S.C. 1320a-3] (a)(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by titles V, XVIII, and XIX[2] or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under titles V, XVIII, and XIX[3],

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest.

(2) As used in this section, the term "disclosing entity" means an entity which is—

(A) a provider of services (as defined in section 1861(u), other than a fund), an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 1301(a) of the Public Health Service Act[4]);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of,

[1]See P.L. 78-410, "Public Health Service Act", §1318, with respect to financial disclosure.

[2]P.L. 97-35, §2353(i)(1), struck out "XIX and XX" and substituted "and XIX", effective October 1, 1981. This amendment was executed as if §2353(i)(1) reads "XIX, and XX" instead of "XIX and XX".

[3]P.L. 97-35, §2353(i)(1), struck out "XIX and XX" and substituted "and XIX", effective October 1, 1981. This amendment was executed as if §2353(i)(1) reads "XIX, and XX" instead of "XIX and XX".

[4]P.L. 78-410.

items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to title V or under a State plan approved under title XIX; or[1]

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of title XVIII, or both, or for purposes of a State plan approved under title XIX) pursuant to (i) an agreement under section 1816, (ii) a contract under section 1842, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under title XIX.[2]

[(D) Stricken.[3]]

(3) As used in this section, the term "person with an ownership or control interest" means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds $25,000 or 5 per centum of the total property and assets of the entity; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1), with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

ISSUANCE OF SUBPENAS BY COMPTROLLER GENERAL

SEC. 1125. [42 U.S.C. 1320a-4] (a) For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this Act, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district

[1] P.L. 97-35, §2353(i)(2)(A), inserted "or", effective October 1, 1981.
[2] P.L. 97-35, §2353(i)(2)(B), struck out "; or" and substituted a period, effective October 1, 1981.
[3] P.L. 97-35, §2353(i)(2)(C), struck out subparagraph (D), effective October 1, 1981.

in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) No personal medical record in the possession of the General Accounting Office shall be subject to subpena or discovery proceedings in a civil action.

DISCLOSURE BY INSTITUTIONS, ORGANIZATIONS, AND AGENCIES OF OWNERS AND CERTAIN OTHER INDIVIDUALS WHO HAVE BEEN CONVICTED OF CERTAIN OFFENSES

SEC. 1126. [42 U.S.C. 1320a-5] (a) As a condition of participation in or certification or recertification under the programs established by titles XVIII, and XIX[1], any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b)) of such institution, organization, or agency, and

(2) has been convicted (on or after the date of the enactment of this section[2], or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health, Education, and Welfare[3] of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term "managing employee" means, with respect to an institution, organization, or agency, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the institution, organization, or agency, or who directly or indirectly conducts the day-to-day operations of the institution, organization, or agency.

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[1] P.L. 97-35, §2353(j), struck out "XIX, and XX" and substituted "and XIX", effective October 1, 1981.

[2] October 25, 1977 [P.L. 95-142; 91 Stat. 1175].

[3] See P.L. 94-505, §201, with respect to the establishment of this Office of Inspector General.

ADJUSTMENT OF RETROACTIVE BENEFITS UNDER TITLE II ON ACCOUNT OF SUPPLEMENTAL SECURITY INCOME BENEFITS[1]

SEC. 1127. [42 U.S.C. 1320a-6] Notwithstanding any other provision of this Act, in any case where an individual—

(1) makes application for benefits under title II and is subsequently determined to be entitled to those benefits, and

(2) was an individual with respect to whom supplemental security income benefits were paid under title XVI (including State supplementary payments which were made under an agreement pursuant to section 1616(a) or an administration agreement under section 212 of Public Law 93-66) for one or more months during the period beginning with the first month for which a benefit described in paragraph (1) is payable and ending with the month before the first month in which such benefit is paid pursuant to the application referred to in paragraph (1),

the benefits (described in paragraph (1)) which are otherwise retroactively payable to such individual for months in the period described in paragraph (2) shall be reduced by an amount equal to so much of such supplemental security income benefits (including State supplementary payments) described in paragraph (2) for such month or months as would not have been paid with respect to such individual or his eligible spouse if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively; and from the amount of such reduction the Secretary shall reimburse the State on behalf of which such supplementary payments were made for the amount (if any) by which such State's expenditures on account of such supplementary payments for the period involved exceeded the expenditures which the State would have made (for such period) if the individual had received the benefits under title II at the times they were regularly due during such period rather than retroactively. An amount equal to the portion of such reduction remaining after reimbursement of the State under the preceding sentence shall be covered into the general fund of the Treasury.

EXCLUSION OF CERTAIN INDIVIDUALS CONVICTED OF MEDICARE- OR MEDICAID-RELATED CRIMES

SEC. 1128. [42 U.S.C. 1320a-7] (a) Whenever the Secretary determines that a physician or other individual has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such individual's participation in the delivery of medical care or services under title XVIII, XIX, or XX, the Secretary—

(1) shall bar from participation in the program under title XVIII[2] each such individual otherwise eligible to participate in such program;

(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX[3] of the fact and circumstances of such

[1] P.L. 96-265, §501(a), added §1127, effective with respect to payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

[2] P.L. 97-35, §2105(b)(1), struck out ", for such period as he may deem appropriate,", effective August 13, 1981.

[3] P.L. 97-35, §2353(k)(1), struck out "or title XX,", effective October 1, 1981.

determination, and (except as provided in subparagraph (B)) require each such agency to bar such individual from participation in such plan for such period as he shall specify, which in the case of an individual specified in paragraph (1) shall be the period established pursuant to paragraph (1);

(B) may waive the requirement under subparagraph (A) to bar an individual from participation in a State plan under title XIX[1], where he receives and approves a request for such a waiver with respect to that individual from the State agency administering or supervising the administration of such plan; and

(3) shall promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such individual of the fact and circumstances of such determination, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health and Human Services fully and currently informed with respect to any actions taken in response to such request.

(b) Whenever the Secretary makes a final determination to impose a civil money penalty or assessment against a person (including an organization, agency, or other entity) under section 1128A relating to a claim under title XVIII or XIX, the Secretary—

(1) may bar the person from participation in the program under title XVIII, and

(2)(A) shall promptly notify each appropriate State agency administering or supervising the administration of a State plan approved under title XIX of the fact and circumstances of such determination, and (except as provided in subparagraph (B)) may require each such agency to bar the person from participation in the program established by such plan for such period as he shall specify, which in the case of an individual shall be the period established pursuant to paragraph (1), and

(B) may waive the requirement of subparagraph (A) to bar a person from participation in such program where he receives and approves a request for such waiver with respect to that person from the State agency referred to in that subparagraph.[2]

(c)[3] A determination made by the Secretary under this section shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, post-hospital extended care services, and home health services furnished under title XVIII, such determination shall be effective in the manner provided in paragraphs (3) and (4) of section 1866(b) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

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[1]P.L. 97-35, §2353(k)(2), struck out "or title XX", effective October 1, 1981.
[2]P.L. 97-35, §2105(b)(4), added subsection (b), effective August 13, 1981.
[3]P.L. 97-35, §2105(b)(3), redesignated subsection (b) as subsection (c), effective August 13, 1981.

(d)[1] Any person who is the subject of an adverse determination made by the Secretary under subsection (a) or (b)[2] shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

CIVIL MONETARY PENALTIES[3]

SEC. 1128A. [42 U.S.C. 1320a-7a] (a) Any person (including an organization, agency, or other entity) that—

(1) presents or causes to be presented to an officer, employee, or agent of the United States, or of any department or agency thereof, or of any State agency (as defined in subsection (h)(1)), a claim (as defined in subsection (h)(2)) that the Secretary determines is for a medical or other item or service—

(A) that the person knows or has reason to know was not provided as claimed, or

(B) payment for which may not be made under the program under which such claim was made, pursuant to a determination by the Secretary under section 1128, 1160(b), or 1862(d), or pursuant to a determination by the Secretary under section 1866(b)(2) with respect to which the Secretary has initiated termination proceedings; or

(2) presents or causes to be presented to any person a request for payment which is in violation of the terms of (A) an assignment under section 1842(b)(3)(B)(ii), or (B) an agreement with a State agency not to charge a person for an item or service in excess of the amount permitted to be charged,[4]

shall be subject, in addition to any other penalties that may be prescribed by law, to a civil money penalty of not more than $2,000 for each item or service. In addition, such a person shall be subject to an assessment of not more than twice the amount claimed for each such item or service in lieu of damages sustained by the United States or a State agency because of such claim.

(b)(1) The Secretary may initiate a proceeding to determine whether to impose a civil money penalty or assessment under subsection (a) only as authorized by the Attorney General pursuant to procedures agreed upon by them.

(2) The Secretary shall not make a determination adverse to any person under subsection (a) until the person has been given written notice and an opportunity for the determination to be made on the record after a hearing at which the person is entitled to be represented by counsel, to present witnesses, and to cross-examine witnesses against the person.

(c) In determining the amount or scope of any penalty or assessment imposed pursuant to subsection (a), the Secretary shall take into account—

(1) the nature of claims and the circumstances under which they were presented,

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[1] P.L. 97-35, §2105(b)(3), redesignated subsection (c) as subsection (d), effective August 13, 1981.
[2] P.L. 97-35, §2105(b)(2), inserted "or (b)", effective August 13, 1981.
[3] P.L. 97-35, §2105(a), added §1128A, effective August 13, 1981.
[4] P.L. 97-248, §137(b)(26), amended in its entirety subsection (a) through paragraph (a)(2), effective as if it originally had been part of P.L. 97-35, §2105(a).

(2) the degree of culpability, history of prior offenses, and financial condition of the person presenting the claims, and

(3) such other matters as justice may require.

(d) Any person adversely affected by a determination of the Secretary under this section may obtain a review of such determination in the United States Court of Appeals for the circuit in which the person resides, or in which the claim was presented, by filing in such court (within sixty days following the date the person is notified of the Secretary's determination) a written petition requesting that the determination be modified or set aside. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary, and thereupon the Secretary shall file in the Court the record in the proceeding as provided in section 2112 of title 28, United States Code. Upon such filing, the court shall have jurisdiction of the proceeding and of the question determined therein, and shall have the power to make and enter upon the pleadings, testimony, and proceedings set forth in such record a decree affirming, modifying, remanding for further consideration, or setting aside, in whole or in part, the determination of the Secretary and enforcing the same to the extent that such order is affirmed or modified. No objection that has not been urged before the Secretary shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Secretary with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Secretary, the court may order such additional evidence to be taken before the Secretary and to be made a part of the record. The Secretary may modify his findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and he shall file with the court such modified or new findings, which findings with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive, and his recommendations, if any, for the modification or setting aside of his original order. Upon the filing of the record with it, the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the Supreme Court of the United States, as provided in section 1254 of title 28, United States Code.

(e) Civil money penalties and assessments imposed under this section may be compromised by the Secretary and may be recovered in a civil action in the name of the United States brought in United States district court for the district where the claim was presented, or where the claimant resides, as determined by the Secretary. Amounts recovered under this section shall be paid to the Secretary and disposed of as follows:

(1)(A) In the case of amounts recovered arising out of a claim under title XIX, there shall be paid to the State agency an amount equal to the State's share of the amount paid by the State agency for such claim.

(B) In the case of amounts recovered arising out of a claim under an allotment to a State under title V, there shall be paid to the State agency an amount equal to three-sevenths of the amount recovered.

(2) Such portion of the amounts recovered as is determined to have been paid out of the trust funds under sections 1817 and 1841 shall be repaid to such trust funds.

(3) The remainder of the amounts recovered shall be deposited as miscellaneous receipts of the Treasury of the United States.

The amount of such penalty or assessment, when finally determined, or the amount agreed upon in compromise, may be deducted from any sum then or later owing by the United States or a State agency to the person against whom the penalty or assessment has been assessed.

(f) A determination by the Secretary to impose a penalty or assessment under subsection (a) shall be final upon the expiration of the sixty-day period referred to in subsection (d). Matters that were raised or that could have been raised in a hearing before the Secretary or in an appeal pursuant to subsection (d) may not be raised as a defense to a civil action by the United States to collect a penalty or assessment assessed under this section.

(g) Whenever the Secretary's determination to impose a penalty or assessment under subsection (a) becomes final, he shall notify the appropriate State or local medical or professional organization, and the appropriate Professional Standards Review Organization[1], and the appropriate State or local licensing agency or organization (including the agency specified in section 1864(a) and 1902(a)(33)) that such a penalty or assessment has become final and the reasons therefor.

(h) For the purposes of this subsection:

(1) The term "State agency" means the agency established or designated to administer or supervise the administration of the State plan under title XIX of this Act or designated to administer the State's program under title V of this Act.

(2) The term "claim" means an application submitted by—

(A) a provider of services or other person, agency, or organization that furnishes an item or service under title XVIII of this Act, or

(B) a person, agency, or organization that furnishes an item or service for which medical assistance is provided under title XIX of this Act, or

(C) a person, agency, or organization that provides an item or service for which payment is made under title V of this Act or from an allotment to a State under such title,

to the United States or a State agency or agent thereof, for payment for health care services under title XVIII or XIX of this Act or for any item or service under title V of this Act.

(3) The term "item or service" includes (A) any particular item, device, medical supply, or service claimed to have been provided to a patient and listed in an itemized claim for payment, and (B) in the case of a claim based on costs, any entry in the cost report, books of account or other documents supporting such claim.

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[1] As in original.

(4) The term "agency of the United States" includes any contractor acting as a fiscal intermediary, carrier, or fiscal agent or any other claims processing agent for a health insurance or medical services program under title XVIII or XIX of this Act.

COORDINATED AUDITS

SEC. 1129. [42 U.S.C. 1320a-8] (a) If an entity provides services reimbursable on a cost-related basis under title[1] XIX, as well as services reimbursable on such a basis under title XVIII, the Secretary shall require, as a condition for payment to any State under title[2] XIX with respect to administrative costs incurred in the performance of audits of the books, accounts, and records of that entity, that these audits be coordinated through common audit procedures with audits performed with respect to the entity for purposes of title XVIII. The Secretary shall specify by regulation such methods as he finds feasible and equitable for the apportionment of the cost of coordinated audits between the program established under title[3] XIX and the program established under title XVIII. Where the Secretary finds that a State has declined to participate in such a common audit with respect to title[4] XIX, he shall reduce the payments otherwise due such State under such title by an amount which he estimates to be in excess of the amount that would have been apportioned to the State under the title (for the expenses of the Sate[5] incurred in the common audit) if it had participated in the common audit.

(b)(1) In the case of entities which have audits coordinated under subsection (a), the Secretary shall establish one or more projects to demonstrate the feasibility of creating a single coordinated appeal hearing to adjudicate those administrative cost items which are determined under such a coordinated audit and which such entities dispute and appeal.

(2) In the case of a demonstration project under this subsection, the Secretary may waive such requirements of title XVIII[6] or XIX as would prevent carrying out the project or would require duplicative activity or otherwise create unnecessary administrative burdens in carrying out the project.

(3) The Secretary shall report to Congress not later than December 31, 1982, with respect to demonstration projects conducted under this subsection, including the reaction of the entities involved and estimates of any savings effected through reduction of duplication of appeal hearings, and shall include in such report recommendations for such legislation as the Secretary deems appropriate to insure the maximum feasible coordination of such appeal hearings.

(4) The Secretary shall also provide for the review of the feasibility of establishing a single coordinated process for the collection of

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[1] P.L. 97-35, §2193(c)(4)(A), struck out "V or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[2] P.L. 97-35, §2193(c)(4)(A), struck out "V or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[3] P.L. 97-35, §2193(c)(4)(A), struck out "V or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[4] P.L. 97-35, §2193(c)(4)(A), struck out "V or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[5] As in original. Should be "State".

[6] P.L. 97-35, §2193(c)(4)(B), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

overpayments established in a coordinated audit under subsection (a). The Secretary shall report to Congress not later than December 31, 1981, on such review and on such recommendations for changes in legislation as the Secretary deems appropriate.

[SEC. 1130. Repealed.[1]]

NOTIFICATION OF SOCIAL SECURITY CLAIMANT WITH RESPECT TO DEFERRED VESTED BENEFITS[2]

SEC. 1131. [42 U.S.C. 1320b-1] (a) Whenever—

(1) the Secretary makes a finding of fact and a decision as to—

(A) the entitlement of any individual to monthly benefits under section 202, 223, or 228,

(B) the entitlement of any individual to a lump-sum death payment payable under section 202(i) on account of the death of any person to whom such individual is related by blood, marriage, or adoption, or

(C) the entitlement under section 226 of any individual to hospital insurance benefits under part A of title XVIII, or

(2) the Secretary is requested to do so—

(A) by any individual with respect to whom the Secretary holds information obtained under section 6057 of the Internal Revenue Code of 1954[3], or

(B) in the case of the death of the individual referred to in subparagraph (A), by the individual who would be entitled to payment under section 204(d) of this Act.[4]

he shall transmit to the individual referred to in paragraph (1) or the individual making the request under paragraph (2) any information, as reported by the employer, regarding any deferred vested benefit transmitted to the Secretary pursuant to such section 6057[5] with respect to the individual referred to in paragraph (1) or (2)(A) or the person on whose wages and self-employment income entitlement (or claim of entitlement) is based.

(b)(1) For purposes of section 201(g)(1), expenses incurred in the administration of subsection (a) shall be deemed to be expenses incurred for the administration of title II.

(2) There are hereby authorized to be appropriated to the Federal Old-Age and Survivors Insurance Trust Fund for each fiscal year (commencing with the fiscal year ending June 30, 1974) such sums as the Secretary deems necessary on account of additional administrative expenses resulting from the enactment of the provisions of subsection (a).

PERIOD WITHIN WHICH CERTAIN CLAIMS MUST BE FILED

SEC. 1132. [42 U.S.C. 1320b-2] (a) Notwithstanding any other provision of this Act (but subject to subsection (b)), any claim by a

[1] P.L. 93-647, §3(e)(1); 88 Stat. 2349.

[2] See P.L. 83-591, "Internal Revenue Code of 1954", §6103(l) relating to disclosure of returns and return information by the Secretary of the Treasury to the Social Security Administration, §7213(a)(1) relating to the penalty for unauthorized disclosure of that tax return information, and §7217 regarding civil damages for unauthorized disclosure of that tax information.

[3] P.L. 83-591.

[4] As in original. Period should be a comma.

[5] P.L. 83-591.

State for payment with respect to an expenditure made during any calendar quarter by the State—

(1) in carrying out a State plan approved under title I, IV,[1] X, XIV, XVI, XIX, or XX of this Act, or

(2) under any other provision of this Act which provides (on an entitlement basis) for Federal financial participation in expenditures made under State plans or programs,

shall be filed (in such form and manner as the Secretary shall by regulations prescribe) within the two-year period which begins on the first day of the calendar quarter immediately following such calendar quarter; and payment shall not be made under this Act on account of any such expenditure if claim therefor is not made within such two-year period; except that this subsection shall not be applied so as to deny payment with respect to any expenditure involving court-ordered retroactive payments or audit exceptions, or adjustments to prior year costs.

(b) The Secretary shall waive the requirement imposed under subsection (a) with respect to the filing of any claim if he determines (in accordance with regulations) that there was good cause for the failure by the State to file such claim within the period prescribed under subsection (a). Any such waiver shall be only for such additional period of time as may be necessary to provide the State with a reasonable opportunity to file such claim. A failure to file a claim within such time period which is attributable to neglect or administrative inadequacies shall be deemed not to be for good cause.

APPLICANTS OR RECIPIENTS UNDER PUBLIC ASSISTANCE PROGRAMS NOT TO BE REQUIRED TO MAKE ELECTION RESPECTING CERTAIN VETERANS' BENEFITS

SEC. 1133. [42 U.S.C. 1320b-3] (a) Notwithstanding any other provision of law (but subject to subsection (b)), no individual who is an applicant for or recipient of aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV, or of benefits under the Supplemental Security Income program established by title XVI shall—

(1) be required, as a condition of eligibility for (or of continuing to receive) such aid, assistance, or benefits, to make an election under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978[2] with respect to pension paid by the Veterans' Administration, or

(2) by reason of failure or refusal to make such an election, be denied (or suffer a reduction in the amount of) such aid, assistance, or benefits.

(b) The provisions of subsection (a) shall be applicable only with respect to an individual, who is an applicant for or recipient of aid, assistance, or benefits described in subsection (a), during a period with respect to which there is in effect—

(1) in case such individual is an applicant for or recipient of aid or assistance under a State plan referred to in subsection (a), in the State having such plan, or

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[1] P.L. 97-35, §2193(c)(5), struck out "V,". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[2] P.L. 95-588.

(2) in case such individual is an applicant for or recipient of benefits under the Supplemental Security Income program established by title XVI, in the State in which the individual applies for or receives such benefits,

a State plan for medical assistance, approved under title XIX, under which medical assistance is available to such individual only for periods for which such individual is a recipient of aid, assistance, or benefits described in subsection (a).

NONPROFIT HOSPITAL PHILANTHROPY

SEC. 1134. [42 U.S.C. 1320b-4] For purposes of determining, under titles XVIII[1] and XIX of this Act, the reasonable costs of services provided by nonprofit hospitals, the following items shall not be deducted from the operating costs of such hospitals:

(1) A grant, gift, or endowment, or income therefrom, which is to or for such a hospital and which has not been designated by the donor for paying any specific operating costs.

(2) A grant or similar payment which is to such a hospital, which was made by a governmental entity, and which is not available under the terms of the grant or payment for use as operating funds.

(3) Those types of donor designated[2] grants and gifts (including grants and similar payments which are made by a governmental entity), and income therefrom, which the Secretary determines, in the best interests of needed health care, should be encouraged.

(4) The proceeds from the sale[3] or mortgage of any real estate or other capital asset of such a hospital, which real estate or asset the hospital acquired through gift or grant, if such proceeds are not available for use as operating funds under the terms of the gift or grant.

Paragraph (4) shall not apply to the recovery of the appropriate share of depreciation when gains or losses are realized from the disposal of depreciable assets.

DEVELOPMENT OF MODEL PROSPECTIVE RATE METHODOLOGY[4]

SEC. 1135. [42 U.S.C. 1320b-5] (a) The Secretary shall develop a model system or systems for the payment of hospitals for inpatient hospital services on a prospective basis which may be applied for reimbursement of hospitals under title XVIII or under a State plan approved under title XIX.

(b) The Secretary shall report to the Congress on the development of such system or systems not later than July 31, 1982.

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[1] P.L. 97-35, §2193(c)(6), struck out "V, XVIII," and substituted "XVIII". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[2] As in original. Possibly should be "donor-designated".

[3] P.L. 97-248, §137(b)(5), struck out "scale" and substituted "sale". The effective date [P.L. 97-248, §137(d)(2)] is executed as if "sale" originally had been shown in P.L. 96-499, §901(a), which added §1134, effective with respect to grants, gifts, and endowments, and income therefrom, made or established after December 5, 1980.

[4] P.L. 97-35, §2173(c), added §1135, effective August 13, 1981.

(c) The Secretary shall develop, in consultation with the Senate Committee on Finance and the Committee on Ways and Means of the House of Representatives, proposals for legislation which would provide that hospitals, skilled nursing facilities, and, to the extent feasible, other providers, would be reimbursed under title XVIII of this Act on a prospective basis. The Secretary shall report such proposals to such committees not later than December 31, 1982.[1]

[1]P.L. 97-248, §101(b)(3), added subsection (c), effective September 3, 1982.

PART B—PEER REVIEW OF THE UTILIZATION AND QUALITY OF HEALTH CARE SERVICES[1]

PURPOSE

SEC. 1151. [42 U.S.C. 1320c] The purpose of this part is to establish the contracting process which the Secretary must follow pursuant to the requirements of section 1862(g) of this Act, including the definition of the utilization and quality control peer review organizations with which the Secretary shall contract, the functions such peer review organizations are to perform, the confidentiality of medical records, and related administrative matters to facilitate the carrying out of the purposes of this part.

DEFINITION OF UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATION

SEC. 1152. [42 U.S.C. 1320c-1] The term "utilization and quality control peer review organization" means an entity which—

(1)(A) is composed of a substantial number of the licensed doctors of medicine and osteopathy engaged in the practice of medicine or surgery in the area and who are representative of the practicing physicians in the area, designated by the Secretary under section 1153, with respect to which the entity shall perform services under this part, or (B) has available to it, by arrangement or otherwise, the services of a sufficient number of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area to assure that adequate peer review of the services provided by the various medical specialties and subspecialties can be assured; and

(2) is able, in the judgment of the Secretary, to perform review functions required under section 1154 in a manner consistent with the efficient and effective administration of this part and to perform reviews of the pattern of quality of care in an area of medical practice where actual performance is measured against objective criteria which define acceptable and adequate practice.

CONTRACTS WITH UTILIZATION AND QUALITY CONTROL PEER REVIEW ORGANIZATIONS

SEC. 1153. [42 U.S.C. 1320c-2] (a)(1) The Secretary shall establish throughout the United States geographic areas with respect to which contracts under this part will be made. In establishing such areas, the Secretary shall use the same areas as established under section 1152 of this Act as in effect immediately prior to the date of the enactment of the Peer Review Improvement Act of 1982[2], but subject to the provisions of paragraph (2).

(2) As soon as practicable after the date of the enactment of the Peer Review Improvement Act of 1982[3], the Secretary shall consoli-

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[1] As in original [P.L. 97-248, §143; 96 Stat. 382].

P.L. 97-35, §§2111, 2112, 2113(a)-(l), 2121(e)-(g), and 2193(c)(7), amended Part B.

P.L. 97-248, §143, amended Part B in its entirety, effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

See P.L. 97-448, "Technical Corrections Act of 1982", §309(d), with respect to certain professional standards review organizations evaluated early in 1982.

[2] P.L. 97-248, Title I, Subtitle C, "Peer Review Improvement Act of 1982", was enacted September 3, 1982.

[3] P.L. 97-248, Title I, Subtitle C, "Peer Review Improvement Act of 1982", was enacted Septem-

date such geographic areas, taking into account the following criteria:

(A) Each State shall generally be designated as a geographic area for purposes of paragraph (1).

(B) The Secretary shall establish local or regional areas rather than State areas only where the volume of review activity or other relevant factors (as determined by the Secretary) warrant such an establishment, and the Secretary determines that review activity can be carried out with equal or greater efficiency by establishing such local or regional areas. In applying this subparagraph the Secretary shall take into account the number of hospital admissions within each State for which payment may be made under title XVIII or a State plan approved under title XIX, with any State having fewer than 180,000 such admissions annually being established as a single statewide area, and no local or regional area being established which has fewer than 60,000 total hospital admissions (including public and private pay patients) under review annually, unless the Secretary determines that other relevant factors warrant otherwise.

(C) No local or regional area shall be designated which is not a self-contained medical service area, having a full spectrum of services, including medical specialists' services.

(b)(1) The Secretary shall enter into a contract with a utilization and quality control peer review organization for each area established under subsection (a) if a qualified organization is available in such area and such organization and the Secretary have negotiated a proposed contract which the Secretary determines will be carried out by such organization in a manner consistent with the efficient and effective administration of this part. If more than one such qualified organization meets the requirements of the preceding sentence, priority shall be given to any such organization which is described in section 1152(1)(A).

(2)(A) During the first twelve months in which the Secretary is entering into contracts under this section, the Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), an entity which directly or indirectly makes payments to any practitioner or provider whose health care services are reviewed by such entity or would be reviewed by such entity if it entered into a contract with the Secretary under this part.

(B) If, after the expiration of the twelve-month period referred to in subparagraph (A), the Secretary determines that there is no other entity available for an area with which the Secretary can enter into a contract under this part, the Secretary may then enter into a contract under this part with an entity described in subparagraph (A) for such area if such entity otherwise meets the requirements of this part.

(C) The twelve-month period referred to in subparagraph (A) shall be deemed to begin not later than October 1983.[1]

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ber 3, 1982.

[1] P.L. 98-21, §602(a), added subparagraph (C), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(3) The Secretary shall not enter into a contract under this part with any entity which is, or is affiliated with (through management, ownership, or common control), a health care facility, or association of such facilities, within the area served by such entity or which would be served by such entity if it entered into a contract with the Secretary under this part.

(c) Each contract with an organization under this section shall provide that—

(1) the organization shall perform the functions set forth in section 1154(a), or may subcontract for the performance of all or some of such functions (and for purposes of paragraphs (2) and (3) of subsection (b), a subcontract under this paragraph shall not constitute an affiliation with the subcontractor);

(2) the Secretary shall have the right to evaluate the quality and effectiveness of the organization in carrying out the functions specified in the contract;

(3) the contract shall be for an initial term of two years and shall be renewable on a biennial basis thereafter;

(4) if the Secretary intends not to renew a contract, he shall notify the organization of his decision at least 90 days prior to the expiration of the contract term, and shall provide the organization an opportunity to present data, interpretations of data, and other information pertinent to its performance under the contract, which shall be reviewed in a timely manner by the Secretary;

(5) the organization may terminate the contract upon 90 days notice to the Secretary;

(6) the Secretary may terminate the contract prior to the expiration of the contract term upon 90 days notice to the organization if the Secretary determines that—

(A) the organization does not substantially meet the requirements of section 1152; or

(B) the organization has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of this part, but only after such organization has had an opportunity to submit data and have such data reviewed by the panel established under subsection (d);

(7) the Secretary shall include in the contract negotiated objectives against which the organization's performance will be judged, and negotiated specifications for use of regional norms, or modifications thereof based on national norms, for performing review functions under the contract; and

(8) reimbursement shall be made to the organization in accordance with the terms of the contract.

(d)(1) Prior to making any termination under subsection (c)(6)(B)[1], the Secretary must provide the organization with an opportunity to provide data, interpretations of data, and other information pertinent to its performance under the contract. Such data and other information shall be reviewed in a timely manner by a panel

[1]P.L. 97-448, §309(b)(2)(A), struck out "(c)(5)(B)" and substituted "(c)(6)(B)", effective as if the amendment had been included originally in P.L. 97-248. It is effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

appointed by the Secretary, and the panel shall submit a report of its findings to the Secretary in a timely manner. The Secretary shall make a copy of the report available to the organization.

(2) The Secretary may accept or not accept the findings of the panel. After the panel has submitted a report with respect to an organization, the Secretary may, with the concurrence of the organization, amend the contract to modify the scope of the functions to be carried out by the organization, or in any other manner. The Secretary may terminate a contract under the authority of subsection (c)(6)(B)[1] upon 90 days notice after the panel has submitted a report, or earlier if the organization so agrees.

(3) A panel appointed by the Secretary under this subsection shall consist of not more than five individuals, each of whom shall be a member of a utilization and quality control peer review organization having a contract with the Secretary under this part. While serving on such panel individuals shall be paid at a per diem rate not to exceed the current per diem equivalent at the time that service on the panel is rendered for grade GS-18 under section 5332 of title 5, United States Code. Appointments shall be made without regard to title 5, United States Code.

(e) Contracting authority of the Secretary under this section may be carried out without regard to any provision of law relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the purposes of this part. The Secretary may use different contracting methods with respect to different geographical areas.

(f) Any determination by the Secretary to terminate or not to renew a contract under this section shall not be subject to judicial review.

FUNCTIONS OF PEER REVIEW ORGANIZATIONS

SEC. 1154. [42 U.S.C. 1320c-3] (a) Any utilization and quality control peer review organization entering into a contract with the Secretary under this part must perform the following functions:

(1) The organization shall review some or all of the professional activities in the area, subject to the terms of the contract, of physicians and other health care practitioners and institutional and noninstitutional providers of health care services in the provision of health care services and items for which payment may be made (in whole or in part) under title XVIII for the purpose of determining whether—

(A) such services and items are or were reasonable and medically necessary and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1862[2];

(B) the quality of such services meets professionally recognized standards of health care; and

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[1] P.L. 97-448, §309(b)(2)(B), struck out "(c)(5)(C)" and substituted "(c)(6)(B)", effective as if the amendment had been included originally in P.L. 97-248. It is effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[2] P.L. 97-448, §309(b)(3), struck out "or otherwise allowable under section 1862(a)(1)" and substituted "and whether such services and items are not allowable under subsection (a)(1) or (a)(9) of section 1862", effective as if the amendment had been included originally in P.L. 97-248. It is effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

(C) in case such services and items are proposed to be provided in a hospital or other health care facility on an inpatient basis, such services and items could, consistent with the provision of appropriate medical care, be effectively provided more economically on an outpatient basis or in an inpatient health care facility of a different type.

(2) The organization shall determine, on the basis of the review carried out under subparagraphs (A) and (C) of paragraph (1), whether payment shall be made for services under title XVIII. Such determination shall constitute the conclusive determination on those issues for purposes of payment under title XVIII, except that payment may be made if—

(A) such payment is allowed by reason of section 1879;

(B) in the case of inpatient hospital services or[1] extended care services, the peer review organization determines that additional time is required in order to arrange for postdischarge care, but payment may be continued under this subparagraph for not more than two days, but only in the case where the provider of such services did not know and could not reasonably have been expected to know (as determined under section 1879) that payment would not otherwise be made for such services under title XVIII prior to notification by the organization under paragraph (3);

(C) such determination is changed as the result of any hearing or review of the determination under section 1155; or

(D) such payment is authorized under section 1861(v)(1)(G).

(3) Whenever the organization makes a determination that any health care services or items furnished or to be furnished to a patient by any practitioner or provider are disapproved, the organization shall promptly notify such practitioner or provider, such patient, and the agency or organization responsible for the payment of claims under title XVIII of this Act. In the case of practitioners and providers of services, the organization shall provide an opportunity for discussion and review of the determination.

(4) The organization shall, after consultation with the Secretary, determine the types and kinds of cases (whether by type of health care or diagnosis involved, or whether in terms of other relevant criteria relating to the provision of health care services) with respect to which such organization will, in order to most effectively carry out the purposes of this part, exercise review authority under the contract. The organization shall notify the Secretary periodically with respect to such determinations.

(5) The organization shall consult with nurses and other professional health care practitioners (other than physicians described in section 1861(r)(1)) and with representatives of institutional and noninstitutional providers of health care services, with respect to the organization's responsibility for the review under paragraph (1) of the professional activities of such practitioners and providers.

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[1] P.L. 97-448, §309(b)(4), struck out "posthospital", effective as if the amendment had been included originally in P.L. 97-248. It is effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

(6) The organization shall, consistent with the provisions of its contract under this part, apply professionally developed norms of care, diagnosis, and treatment based upon typical patterns of practice within the geographic area served by the organization as principal points of evaluation and review, taking into consideration national norms where appropriate. Such norms with respect to treatment for particular illnesses or health conditions shall include—

(A) the types and extent of the health care services which, taking into account differing, but acceptable, modes of treatment and methods of organizing and delivering care, are considered within the range of appropriate diagnosis and treatment of such illness or health condition, consistent with professionally recognized and accepted patterns of care; and

(B) the type of health care facility which is considered, consistent with such standards, to be the type in which health care services which are medically appropriate for such illness or condition can most economically be provided.

(7) The organization, to the extent necessary and appropriate to the performance of the contract, shall—

(A) make arrangements to utilize the services of persons who are practitioners of, or specialists in, the various areas of medicine (including dentistry), or other types of health care, which persons shall, to the maximum extent practicable, be individuals engaged in the practice of their profession within the area served by such organization;

(B) undertake such professional inquiries either before or after, or both before and after, the provision of services with respect to which such organization has a responsibility for review which in the judgment of such organization will facilitate its activities;

(C) examine the pertinent records of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1); and

(D) inspect the facilities in which care is rendered or services are provided (which are located in such area) of any practitioner or provider of health care services providing services with respect to which such organization has a responsibility for review under paragraph (1).

(8) The organization shall perform such duties and functions and assume such responsibilities and comply with such other requirements as may be required by this part or under regulations of the Secretary promulgated to carry out the provisions of this part.

(9) The organization shall collect such information relevant to its functions, and keep and maintain such records, in such form as the Secretary may require to carry out the purposes of this part, and shall permit access to and use of any such information and records as the Secretary may require for such purposes, subject to the provisions of section 1160.

(10) The organization shall coordinate activities, including information exchanges, which are consistent with economical and efficient operation of programs among appropriate public and private agencies or organizations including—

(A) agencies under contract pursuant to sections 1816 and 1842 of this Act;

(B) other peer review organizations having contracts under this part; and

(C) other public or private review organizations as may be appropriate.

(11) The organization shall make available its facilities and resources for contracting with private and public entities paying for health care in its area for review, as feasible and appropriate, of services reimbursed by such entities.

(b)(1) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services; or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

(2) For purposes of this subsection, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(c) No utilization and quality control peer review organization shall utilize the services of any individual who is not a duly licensed doctor of medicine, osteopathy, or dentistry to make final determinations of denial decisions in accordance with its duties and functions under this part with respect to the professional conduct of any other duly licensed doctor of medicine, osteopathy, or dentistry, or any act performed by any duly licensed doctor of medicine, osteopathy, or dentistry in the exercise of his profession.

RIGHT TO HEARING AND JUDICIAL REVIEW

SEC. 1155. [42 U.S.C. 1320c-4] Any beneficiary who is entitled to benefits under title XVIII, and any practitioner or provider, who is dissatisfied with a determination made by a contracting peer review organization in conducting its review responsibilities under this part, shall be entitled to a reconsideration of such determination by the reviewing organization. Where the reconsideration is adverse to the beneficiary and where the matter in controversy is $200 or more, such beneficiary shall be entitled to a hearing by the Secretary (to the same extent as is provided in section 205(b)), and, where the amount in controversy is $2,000 or more, to judicial review of the Secretary's final decision.

OBLIGATIONS OF HEALTH CARE PRACTITIONERS AND PROVIDERS OF HEALTH CARE SERVICES; SANCTIONS AND PENALTIES; HEARINGS AND REVIEW

SEC. 1156. [42 U.S.C. 1320c-5] (a) It shall be the obligation of any health care practitioner and any other person (including a hospital or other health care facility, organization, or agency) who provides health care services for which payment may be made (in whole or in part) under title XVIII, to assure, to the extent of his authority that services or items ordered or provided by such practitioner or person to beneficiaries and recipients under such title—

(1) will be provided economically and only when, and to the extent, medically necessary;

(2) will be of a quality which meets professionally recognized standards of health care; and

(3) will be supported by evidence of medical necessity and quality in such form and fashion and at such time as may reasonably be required by a reviewing peer review organization in the exercise of its duties and responsibilities.

(b)(1) If after reasonable notice and opportunity for discussion with the practitioner or person concerned, any organization having a contract with the Secretary under this part determines that such practitioner or person has—

(A) failed in a substantial number of cases substantially to comply with any obligation imposed on him under subsection (a), or

(B) grossly and flagrantly violated any such obligation in one or more instances,

such organization shall submit a report and recommendations to the Secretary. If the Secretary agrees with such determination, and determines that such practitioner or person, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under title XVIII, has demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, the Secretary (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe) such practitioner or person from eligibility to provide such services on a reimbursable basis. If the Secretary fails to act upon the recommendations submitted to him by such organization within 120 days after such submission, such practitioner or person shall be excluded from eligibility to provide services on a reimbursable basis until such time as the Secretary determines otherwise.

(2) A determination made by the Secretary under this subsection to exclude a practitioner or person shall be effective at such time and upon such reasonable notice to the public and to the practitioner or person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of institutional health care services such determination shall be effective in the manner provided in title XVIII with respect to terminations of provider agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) In lieu of the sanction authorized by paragraph (1), the Secretary may require that (as a condition to the continued eligibility of such practitioner or person to provide such health care services on a reimbursable basis) such practitioner or person pays to the United States, in case such acts or conduct involved the provision or ordering by such practitioner or person of health care services which were medically improper or unnecessary, an amount not in excess of the actual or estimated cost of the medically improper or unnecessary services so provided. Such amount may be deducted from any

sums owing by the United States (or any instrumentality thereof) to the practitioner or person from whom such amount is claimed.

(4) Any practitioner or person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(c) It shall be the duty of each utilization and quality control peer review organization to use such authority or influence it may possess as a professional organization, and to enlist the support of any other professional or governmental organization having influence or authority over health care practitioners and any other person (including a hospital or other health care facility, organization, or agency) providing health care services in the area served by such review organization, in assuring that each practitioner or person (referred to in subsection (a)) providing health care services in such area shall comply with all obligations imposed on him under subsection (a).

LIMITATION ON LIABILITY

SEC. 1157. [42 U.S.C. 1320c-6] (a) Notwithstanding any other provision of law, no person providing information to any organization having a contract with the Secretary under this part shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the contract of such organization; or

(2) such information is false and the person providing it knew, or had reason to believe, that such information was false.

(b) No person who is employed by, or who has a fiduciary relationship with, any such organization or who furnishes professional services to such organization, shall be held by reason of the performance by him of any duty, function, or activity required or authorized pursuant to this part or to a valid contract entered into under this part, to have violated any criminal law, or to be civilly liable under any law of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

(c) No doctor of medicine or osteopathy and no provider (including directors, trustees, employees, or officials thereof) of health care services shall be civilly liable to any person under any law of the United States or of any State (or political subdivision thereof) on account of any action taken by him in compliance with or reliance upon professionally developed norms of care and treatment applied by an organization under contract pursuant to section 1153 operating in the area where such doctor of medicine or osteopathy or provider took such action; but only if—

(1) he takes such action in the exercise of his profession as a doctor of medicine or osteopathy or in the exercise of his functions as a provider of health care services; and

(2) he exercised due care in all professional conduct taken or directed by him and reasonably related to, and resulting from, the actions taken in compliance with or reliance upon such professionally accepted norms of care and treatment.

(d) The Secretary shall make payment to an organization under contract with him pursuant to this part, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function under such contract by such organization, member, or employee.

APPLICATION OF THIS PART TO CERTAIN STATE PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

SEC. 1158. [42 U.S.C. 1320c-7] (a) A State plan approved under title XIX of this Act may provide that the functions specified in section 1154 may be performed in an area by contract with a utilization and quality control peer review organization that has entered into a contract with the Secretary in accordance with the provisions of section 1862(g).

(b) In the event a State enters into a contract in accordance with subsection (a), the Federal share of the expenditures made to the contracting organization for its costs in the performance of its functions under the State plan shall be 75 percent (as provided in section 1903(a)(3)(C)).

AUTHORIZATION FOR USE OF CERTAIN FUNDS TO ADMINISTER THE PROVISIONS OF THIS PART

SEC. 1159. [42 U.S.C. 1320c-8] Expenses incurred in the administration of the contracts described in section 1862(g) shall be payable from—

(1) funds in the Federal Hospital Insurance Trust Fund; and

(2) funds in the Federal Supplementary Medical Insurance Trust Fund,

in such amounts from each of such Trust Funds as the Secretary shall deem to be fair and equitable after taking into consideration the expenses attributable to the administration of this part with respect to each of such programs. The Secretary shall make such transfers of moneys between such Trust Funds as may be appropriate to settle accounts between them in cases where expenses properly payable from one such Trust Fund have been paid from the other such Trust Fund.

PROHIBITION AGAINST DISCLOSURE OF INFORMATION

SEC. 1160. [42 U.S.C. 1320c-9] (a) An organization, in carrying out its functions under a contract entered into under this part, shall not be a Federal agency for purposes of the provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act). Any data or information acquired by any such organization in the exercise of its duties and functions shall be held in confidence and shall not be disclosed to any person except—

(1) to the extent that may be necessary to carry out the purposes of this part,

(2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of

the rights and interests of patients, health care practitioners, or providers of health care, or

(3) in accordance with subsection (b).

(b) An organization having a contract with the Secretary under this part shall provide in accordance with procedures and safeguards established by the Secretary, data and information—

(1) which may identify specific providers or practitioners as may be necessary—

(A) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case or pattern;

(B) to assist appropriate Federal and State agencies recognized by the Secretary as having responsibility for identifying cases or patterns involving risks to the public health, which data and information shall be provided by the peer review organization to any such agency—

(i) at the discretion of the peer review organization, at the request of such agency relating to a specific case or pattern with respect to which such agency has made a finding, or has a reasonable belief, that there may be a substantial risk to the public health, or

(ii) upon a finding by, or the reasonable belief of, the peer review organization that there may be a substantial risk to the public health; and

(C) to assist appropriate State agencies recognized by the Secretary as having responsibility for licensing or certification of providers or practitioners, which data and information shall be provided by the peer review organization to any such agency at the request of such agency relating to a specific case, but only to the extent that such data and information is required by the agency in carrying out a function which is within the jurisdiction of such agency under State law; and

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such organization, and shall be in the form of aggregate statistical data (without explicitly identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such organization.

The penalty provided in subsection (c) shall not apply to the disclosure of any information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such information) of any such information described in

paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the information. An organization may require payment of a reasonable fee for providing information under this subsection in response to a request for such information.

(c) It shall be unlawful for any person to disclose any such information described in subsection (a) other than for the purposes provided in subsections (a) and (b), and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than 6 months, or both, and shall be required to pay the costs of prosecution.

(d) No patient record in the possession of an organization having a contract with the Secretary under this part shall be subject to subpena or discovery proceedings in a civil action.

ANNUAL REPORTS

SEC. 1161. [42 U.S.C. 1320c-10] The Secretary shall submit to the Congress not later than April 1 of each year, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status, and service areas of all utilization and quality control peer review organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by such organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the various methods of reimbursement utilized in contracts under this part, and the relative efficiency of each such method of reimbursement;

(4) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(5) the total costs incurred under titles XVIII and XIX of this Act in the implementation and operation of all procedures required by such titles for the review of services to determine their medical necessity, appropriateness of use, and quality; and

(6) descriptions of the criteria upon which decisions are made, and the selection and relative weights of such criteria.

EXEMPTIONS OF CHRISTIAN SCIENCE SANATORIUMS

SEC. 1162. [42 U.S.C. 1320c-11] The provisions of this part shall not apply with respect to a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

MEDICAL OFFICERS IN AMERICAN SAMOA, THE NORTHERN MARIANA ISLANDS, AND THE TRUST TERRITORY OF THE PACIFIC ISLANDS TO BE INCLUDED IN THE UTILIZATION AND QUALITY CONTROL PEER REVIEW PROGRAM

SEC. 1163. [42 U.S.C 1320c-12] For purposes of applying this part to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

TITLE XII—ADVANCES TO STATE UNEMPLOYMENT FUNDS[1]

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ADVANCES TO STATE UNEMPLOYMENT FUNDS[3]

SECTION 1201. [42 U.S.C. 1321] (a)(1) Advances shall be made to the States from the Federal unemployment account in the Unemployment Trust Fund as provided in this section, and shall be repayable, with interest to the extent provided in section 1202(b)[4], in the manner provided in sections 901(d)(1), 903(b)(2), and 1202. An advance to a State for the payment of compensation in any 3-month period may be made if—

(A) the Governor of the State applies therefor no earlier than the first day of the month preceding the first month of such 3-month period, and

(B) he furnishes to the Secretary of Labor his estimate of the amount of an advance which will be required by the State for the payment of compensation in each month of such 3-month period.

(2) In the case of any application for an advance under this section to any State for any 3-month period, the Secretary of Labor shall—

(A) determine the amount (if any) which he finds will be required by such State for the payment of compensation in each month of such 3-month period, and

(B) certify to the Secretary of the Treasury the amount (not greater than the amount estimated by the Governor of the State) determined under subparagraph (A).

The aggregate of the amounts certified by the Secretary of Labor with respect to any 3-month period shall not exceed the amount which the Secretary of the Treasury reports to the Secretary of

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[1]Title XII of the Social Security Act is administered by the Department of Labor.

Title XII appears in the United States Code as §§1321-1324, subchapter XII, chapter 7, Title 42.

Regulations of the Secretary of Labor relating to Title XII are contained in chapter V, Title 20, Code of Federal Regulations.

[2]This table of contents does not appear in the law.

[3]See P.L. 83-591, "Internal Revenue Code of 1954", §3302(c)(3), with respect to advances to a State or State agency, p. 851.

See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §1025, with respect to withholding certification of State unemployment laws.

[4]P.L. 97-35, §2407(b)(1), struck out "without interest" [from paragraph (1) of §1201] and substituted "with interest to the extent provided in section 1202(b)", effective August 13, 1981. Executed as if §2407(b)(1) reads "Paragraph (1) of section 1201(a)".

Labor is available in the Federal unemployment account for advances with respect to each month of such 3-month period.

(3) For purposes of this subsection—

(A) an application for an advance shall be made on such forms, and shall contain such information and data (fiscal and otherwise) concerning the operation and administration of the State unemployment compensation law, as the Secretary of Labor deems necessary or relevant to the performance of his duties under this title,

(B) the amount required by any State for the payment of compensation in any month shall be determined with due allowance for contingencies and taking into account all other amounts that will be available in the State's unemployment fund for the payment of compensation in such month, and

(C) the term "compensation" means cash benefits payable to individuals with respect to their unemployment, exclusive of expenses of administration.

(b) The Secretary of the Treasury shall, prior to audit or settlement by the General Accounting Office, transfer in monthly installments from the Federal unemployment account to the account of the State in the Unemployment Trust Fund the amount certified under subsection (a) by the Secretary of Labor (but not exceeding that portion of the balance in the Federal unemployment account at the time of the transfer which is not restricted as to use pursuant to section 903(b)(1)). The amount of any monthly installment so transferred shall not exceed the amount estimated by the State to be required for the payment of compensation for the month with respect to which such installment is made.

REPAYMENT BY STATES OF ADVANCES TO STATE UNEMPLOYMENT FUNDS

SEC. 1202. [42 U.S.C. 1322] (a)[1] The Governor of any State may at any time request that funds be transferred from the account of such State to the Federal unemployment account in repayment of part or all of that balance of advances, made to such State under section 1201, specified in the request. The Secretary of Labor shall certify to the Secretary of the Treasury the amount and balance specified in the request; and the Secretary of the Treasury shall promptly transfer such amount in reduction of such balance.

(b)(1) Except as otherwise provided in this subsection, each State shall pay interest on any advance made to such State under section 1201. Interest so payable with respect to periods during any calendar year shall be at the rate determined under paragraph (4) for such calendar year.

(2) No interest shall be required to be paid under paragraph (1) with respect to any advance or advances[2] made during any calendar year if—

(A) such advances are[3] repaid in full before the close of September 30 of the calendar year in which the advances were[4] made, and

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[1] P.L. 97-35, §2407(b)(2), inserted "(a)", effective August 13, 1981.

[2] P.L. 98-118, §5(a)(1), inserted "or advances", applicable with respect to advances made on or after April 1, 1982.

[3] P.L. 98-118, §5(a)(2), struck out "advance is" and substituted "advances are", applicable with respect to advances made on or after April 1, 1982.

[4] P.L. 98-118, §5(a)(3), struck out "advance was" and substituted "advances were", applicable with respect to advances made on or after April 1, 1982.

(B) no other advance was made to such State under section 1201 during such calendar year and after the date on which the repayment of the advances[1] was completed.

(3)(A) Interest payable under paragraph (1) which was attributable to periods during any fiscal year shall be paid by the State to the Secretary of the Treasury prior to[2] the first day of the following fiscal year. If interest is payable under paragraph (1) on any advance (hereinafter in this subparagraph referred to as the "first advance") by reason of another advance made to such State after September 30 of the calendar year in which the first advance was made, interest on such first advance attributable to periods before such September 30 shall be paid not later than the day after the date on which the other advance was made.

(B) Notwithstanding subparagraph (A), in the case of any advance made during the last 5 months of any fiscal year, interest on such advance attributable to periods during such fiscal year shall not be required to be paid before the last day of the succeeding taxable year. Any interest the time for payment of which is deferred by the preceding sentence shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph.

(C)(i) In the case of any State which meets the requirements of clause (ii) for any calendar year, any interest otherwise required to be paid under this subsection during such calendar year shall be paid as follows—

(I) 25 percent of the amount otherwise required to be paid on or before any day during such calendar year shall be paid on or before such day; and

(II) 25 percent of the amount otherwise required to be paid on or before such day shall be paid on or before the corresponding day in each of the 3 succeeding calendar years.

No interest shall accrue on such deferred interest.[3]

(ii) A State meets the requirements of this clause for any calendar year if the rate of insured unemployment (as determined for purposes of section 203 of the Federal-State Extended Unemployment Compensation Act of 1970[4]) under the State law of the period consisting of the first 6 months of the preceding calendar year equaled or exceeded 7.5 percent.[5]

(4) The interest rate determined under this paragraph with respect to any calendar year is a percentage (but not in excess of 10 percent) determined by dividing—

(A) the aggregate amount credited under section 904(e) to State accounts on the last day of the last calendar quarter of the immediately preceding calendar year, by

(B) the aggregate of the average daily balances of the State accounts for such quarter as determined under section 904(e).

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[1]P.L. 98-118, §5(a)(4), struck out "advance" and substituted "advances", applicable with respect to advances made on or after April 1, 1982.

[2]P.L. 98-21, §514, struck out "not later than" and substituted "prior to", effective April 20, 1983.

[3]P.L. 98-21, §511(c), struck out "Any interest the time for payment of which is deferred under this subparagraph shall bear interest in the same manner as if it were an advance made on the day on which it would have been required to be paid but for this subparagraph." and substituted "No interest shall accrue on such deferred interest.", effective April 20, 1983.

[4]P.L. 91-373, Title II.

[5]P.L. 97-248, §274(a), added subparagraph (C), effective with respect to interest required to be paid after December 31, 1982.

(5) Interest required to be paid under paragraph (1) shall not be paid (directly or indirectly) by a State from amounts in its unemployment fund. If the Secretary of Labor determines that any State action results in the paying of such interest directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) from such unemployment fund, the Secretary of Labor shall not certify such State's unemployment compensation law under section 3304 of the Internal Revenue Code of 1954[1]. Such noncertification shall be made in accordance with section 3304(c) of such Code[2].

(6)(A) For purposes of paragraph (2), any voluntary repayment shall be applied against advances made under section 1201 on the last made first repaid basis. Any other repayment of such an advance shall be applied against advances on a first made first repaid basis.

(B) For purposes of this paragraph, the term "voluntary repayment" means any repayment made under subsection (a).

(7) This subsection shall only apply to advances made on or after April 1, 1982[3].[4]

(8)(A) With respect to interest due under this section on September 30 of 1983, 1984, or 1985 (other than interest previously deferred under paragraph (3)(C)), a State may pay 80 percent of such interest in four annual installments of at least 20 percent beginning with the year after the year in which it is otherwise due, if such State meets the criteria of subparagraph (B). No interest shall accrue on such deferred interest.

(B) To meet the criteria of this subparagraph a State must—

(i) have taken no action since October 1, 1982, which would reduce its net unemployment tax effort or the net solvency of its unemployment system (as determined for purposes of section 3302(f) of the Internal Revenue Code of 1954[5]); and

(ii)(I) have taken an action (as certified by the Secretary of Labor) after March 31, 1982, which would have increased revenue liabilities and decreased benefits under the State's unemployment compensation system (hereinafter referred to as a "solvency effort") by a combined total of the applicable percentage (as compared to such revenues and benefits as would have been in effect without such State action) for the calendar year for which the deferral is requested; or

(II) have had, for taxable year 1982, an average unemployment tax rate which was equal to or greater than 2.0 percent of the total of the wages (as determined without any limitation on amount) attributable to such State subject to contribution under the State unemployment compensation law with respect to such taxable year.

In the case of the first year for which there is a deferral (over a 4-year period) of the interest otherwise payable for such year, the applicable percentage shall be 25 percent. In the case of the second such year, the applicable percentage shall be 35 percent. In the case of the third such year, the applicable percentage shall be 50 percent.

(C)(i) The base year is the first year for which deferral under this provision is requested and subsequently granted. The Secretary of

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3304, p. 861.
[2]See P.L. 83-591, "Internal Revenue Code of 1954", §3304(c), p. 866.
[3]P.L. 98-21, §511(b), struck out ", and before January 1, 1988", effective April 20, 1983.
[4]P.L. 97-35, §2407(a), added subsection (b), effective August 13, 1981.
[5]See P.L. 83-591, "Internal Revenue Code of 1954", §3302(f), p. 853.

Labor shall estimate the unemployment rate for the base year. To determine whether a State meets the requirements of subparagraph (B)(ii)(I), the Secretary of Labor shall determine the percentage by which the benefits and taxes in the base year with the application of the action referred to in subparagraph (B)(ii)(I) are lower or greater, as the case may be, than such benefits and taxes would have been without the application of such action. In making this determination, the Secretary shall deem the application of the action referred to in subparagraph (B)(ii)(I) to have been effective for the base year to the same extent as such action is effective for the year following the year for which the deferral is sought. Once a deferral is approved under clause (ii)(I) of subparagraph (B) a State must continue to maintain its solvency effort. Failure to do so shall result in the State being required to make immediate payment of all deferred interest.

(ii) Increases in the taxable wage base from $6,000 to $7,000 or increases after 1984 in the maximum tax rate to 5.4 percent shall not be counted for purposes of meeting the requirement of subparagraph (B).

(D) In the case of a State which produces a solvency effort of 50 percent, 80 percent, and 90 percent rather than the 25 percent, 35 percent, and 50 percent required under subparagraph (B), the interest shall be computed at an interest rate which is 1 percentage point less than the otherwise applicable interest rate.[1]

(9) Any interest otherwise due from a State on September 30 of a calendar year after 1982 may be deferred (and no interest shall accrue on such deferred interest) for a grace period of not to exceed 9 months if, for the most recent 12-month period for which data are available before the date such interest is otherwise due, the State had an average total unemployment rate of 13.5 percent or greater.[2]

ADVANCES TO FEDERAL UNEMPLOYMENT ACCOUNT

SEC. 1203. [42 U.S.C. 1323] There are hereby authorized to be appropriated to the Federal unemployment account, as repayable advances (without interest), such sums as may be necessary to carry out the purposes of this title. Amounts appropriated as repayable advances shall be repaid, without interest, by transfers from the Federal unemployment account to the general fund of the Treasury, at such times as the amount in the Federal unemployment account is determined by the Secretary of the Treasury, in consultation with the Secretary of Labor, to be adequate for such purpose.[3] Any amount transferred as a repayment under this section shall be credited against, and shall operate to reduce, any balance of advances repayable under this section.[4] Whenever, after the application of sections 901(f)(3) and 902(a) with respect to the excess in the employment security administration account as of the close of any fiscal year, there remains any portion of such excess, so much of such remainder as does not exceed the balance of advances made pursuant to this section shall be transferred to the general fund of the Treasury and shall be credited against, and shall operate to reduce, such balance of advances.

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[1] P.L. 98-21, §511(a), added paragraph (8), effective April 20, 1983.
[2] P.L. 98-21, §511(a), added paragraph (9), effective April 20, 1983.
[3] P.L. 98-135, §205(a), inserted the preceding sentence, effective October 24, 1983.
[4] P.L. 98-135, §205(a), inserted the preceding sentence, effective October 24, 1983.

DEFINITION OF GOVERNOR

SEC. 1204. [42 U.S.C. 1324] When used in this title, the term "Governor" includes the Commissioners of the District of Columbia.

TITLE XIII—RECONVERSION UNEMPLOYMENT BENEFITS FOR SEAMEN[1]

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SEC. 1301. [42 U.S.C. 1331] This title shall be administered by the Federal Security Administrator.[3]

DEFINITIONS

SEC. 1302. [42 U.S.C. 1332] When used in this title—

(a) The term "reconversion period" means the period (1) beginning with the fifth Sunday after the date of the enactment of this title, and (2) ending June 30, 1950.

(b) The term "compensation" means cash benefits payable to individuals with respect to their unemployment (including any portion thereof payable with respect to dependents).

(c) The term "Federal maritime service" means service performed prior to July 1, 1949, which is determined to be employment pursuant to section 209(o).

(d) The term "Federal maritime wages" means remuneration determined pursuant to section 209(o) to be remuneration for service referred to in section 209(o)(1), which was performed prior to July 1, 1949.

COMPENSATION FOR SEAMEN

SEC. 1303. [42 U.S.C. 1333] (a) The Administrator is authorized on behalf of the United States to enter into an agreement with any State, or with the unemployment compensation agency of such State, under which such State agency (1) will make, as agent of the United States, payments of compensation, on the basis provided in subsection (b), to individuals who have performed Federal maritime

[1] P.L. 79-719 (60 Stat. 978, approved August 10, 1946), §306, added this title. This title has been inactive since the reconversion period ended in 1950.

[2] This table of contents does not appear in the law.

[3] By Reorganization Plan No. 2 of 1949 (14 FR 5225, 63 Stat. 1065), §1, effective August 19, 1949, "The functions of the Federal Security Administrator with respect to * * * unemployment compensation, and the Bureau of Employment Security, together with his functions under the Federal Unemployment Tax Act (as amended, and as affected by the provisions of Reorganization Plan No. 2 of 1946, 60 Stat. 1095, 26 U.S.C. 1600-1611), are transferred to the Secretary of Labor."

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service, and (2) will otherwise cooperate with the Administrator and with other State unemployment compensation agencies in making payments of compensation authorized by this title.

(b) Any such agreement shall provide that compensation will be paid to such individuals, with respect to unemployment occurring in the reconversion period, in the same amounts, on the same terms, and subject to the same conditions as the compensation which would be payable to such individuals under the State unemployment compensation law if such individuals' Federal maritime service and Federal maritime wages had (subject to regulations of the Administrator concerning the allocation of such service and wages among the several States) been included as employment and wages under such law; except that the compensation to which an individual is entitled under such an agreement for any week shall be reduced by 15 per centum of the amount of any annuity or retirement pay which such individual is entitled to receive, under any law of the United States relating to the retirement of officers or employees of the United States, for the month in which such week begins, unless a deduction from such compensation on account of such annuity or retirement pay is otherwise provided for by the applicable State law.

(c) If in the case of any State an agreement is not entered into under this section or the unemployment compensation agency of such State fails to make payments in accordance with such an agreement, the Administrator, in accordance with regulations prescribed by him, shall make payments of compensation to individuals who file a claim for compensation which is payable under such agreement, or would be payable if such agreement were entered into, on a basis which will provide that they will be paid compensation in the same amounts, on substantially the same terms, and subject to substantially the same conditions as though such agreement had been entered into and such agency made such payments. Final determinations by the Administrator of entitlement to such payments shall be subject to review by the courts in the same manner and to the same extent as is provided in Title II with respect to decisions by the Administrator under such title.

(d) Operators of vessels who are or were general agents of the War Shipping Administration or of the United States Maritime Commission shall furnish to individuals who have been in Federal maritime service, to the appropriate State agency, and to the Administrator such information with respect to wages and salaries as the Administrator may determine to be practicable and necessary to carry out the purposes of this title.

(e) Pursuant to regulations prescribed by the Administrator, he, and any State agency making payments of compensation pursuant to an agreement under this section, may—

(1) to the extent that the Administrator finds that it is not feasible for Federal agencies or operators of vessels to furnish information necessary to permit exact and reasonably prompt determinations of the wages or salaries of individuals who have performed Federal maritime service, determine the amount of and pay compensation to any individual under this section, or an agreement thereunder, as if the wages or salary paid such individual for each week of such service were in an amount equal to his average weekly wages or salary for the last pay period of

such service occurring prior to the time he files his initial claim for compensation; and

(2) to the extent that information is inadequate to assure the prompt payment of compensation authorized by this section (either on the basis of the exact wages or salaries of the individuals concerned or on the basis prescribed in clause (1) of this subsection), accept certification under oath by individuals of facts relating to their Federal maritime service and to wages and salaries paid them with respect to such service.

ADMINISTRATION

SEC. 1304. [42 U.S.C. 1334] (a) Determinations of entitlement to payments of compensation by a State unemployment compensation agency under an agreement under this title shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in such manner and to such extent.

(b) For the purpose of payments made to a State under Title III administration by the unemployment compensation agency of such State pursuant to an agreement under this title shall be deemed to be a part of the administration of the State unemployment compensation law.

(c) The State unemployment compensation agency of each State shall furnish to the Administrator such information as the Administrator may find necessary in carrying out the provisions of this title, and such information shall be deemed reports required by the Administrator for the purposes of section 303(a)(6).

PAYMENTS TO STATES

SEC. 1305. [42 U.S.C. 1335] (a) Each State shall be entitled to be paid by the United States an amount equal to the additional cost to the State of payments of compensation made under and in accordance with an agreement under this title, which would not have been incurred by the State but for the agreement.

(b) In making payments pursuant to subsection (a) of this section, there shall be paid to the State, either in advance or by way of reimbursement, as may be determined by the Administrator, such sum as the Administrator estimates the State will be entitled to receive under this title for each calendar quarter; reduced or increased, as the case may be, by any sum by which the Administrator finds that his estimates for any prior calendar quarter were greater or less than the amounts which should have been paid to the State. The amount of such payments may be determined by such statistical, sampling, or other method as may be agreed upon by the Administrator and the State agency.

(c) The Administrator shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this section. The Secretary of the Treasury, prior to audit or settlement by the General Accounting Office, shall make payment, at the time or times fixed by the Administrator, in accordance with certification, from the funds for carrying out the purpose of this title. Notwithstanding any other provision of this title, no compensation shall be paid to any individu-

al pursuant to this title with respect to unemployment occurring prior to the date when funds are made available for such payments.

(d) All money paid to a State under this section shall be used solely for the purposes for which it is paid; and any money so paid which is not used for such purposes shall be returned to the Treasury upon termination of the agreement or termination of the reconversion period, whichever first occurs.

(e) An agreement under this title may require any officer or employee of the State certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in its performance, to give a surety bond to the United States in such amount as the Administrator may deem necessary, and may provide for the payment of the cost of such bond from appropriations for carrying out the purposes of this title.

(f) No person designated by the Administrator, or designated pursuant to an agreement under this title, as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to the payment of any compensation certified by him under this title.

(g) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this title if it was based upon a voucher signed by a certifying officer designated as provided in subsection (f).

PENALTIES

SEC. 1306. [42 U.S.C. 1336] (a) Whoever, for the purpose of causing any compensation to be paid under this title or under an agreement thereunder where none is authorized to be so paid, shall make or cause to be made any false statement or representation as to any wages paid or received, or whoever makes or causes to be made any false statement of a material fact in any claim for any compensation authorized to be paid under this title or under an agreement thereunder, or whoever makes or causes to be made any false statement, representation, affidavit, or document in connection with such claim, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) Whoever shall obtain or receive any money, check or compensation under this title or an agreement thereunder, without being entitled thereto and with intent to defraud the United States, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(c) Whoever willfully fails or refuses to furnish information which the Administrator requires him to furnish pursuant to authority of section 1303(d), or willfully furnishes false information pursuant to a requirement of the Administrator under such subsection, shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than six months, or both.

[TITLE XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED][1]

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APPROPRIATION

SECTION 1401. [42 U.S.C. 1351] For the purpose of enabling each State to furnish financial assistance, as far as practicable under the conditions in such State, to needy individuals eighteen years of age and older who are permanently and totally disabled[3], there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Administrator, State plans for aid to the permanently and totally disabled.

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[1]P.L. 92-603, §303, *repealed* Title XIV, effective January 1, 1974, *except* with respect to Puerto Rico, Guam, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a Title XIV social services program if it chooses; see P.L. 94-241, approved March 24, 1976, 90 Stat. 263.

Title XIV of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under Title XIV. The Administration for Public Services, Office of Human Development Services, administers social services under Title XIV.

Title XIV appears in the United States Code as §§1351-1355, subchapter XIV, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title XIV are contained in chapter 1, Title 42, and subtitle A and chapter XIII, Title 45, Code of Federal Regulations.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment" which prohibits denial of grants-in-aid under certain conditions.

See P.L. 87-543, "Public Welfare Amendments of 1962", §141(b), with respect to ineligibility to receive payments under Title XIV where payments have been made under Title XVI.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 89-97, "Social Security Amendments of 1965", §121(b), with respect to restrictions on payment to a State receiving payments under Title XIX.

[2]This table of contents does not appear in the law.

[3]P.L. 97-35, §2184(c)(1), struck out "and of encouraging each State, as far as practicable under such conditions, to furnish rehabilitation and other services to help such individuals attain or retain capability for self-support or self-care", effective August 13, 1981.

STATE PLANS FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

SEC. 1402. [42 U.S.C. 1352] (a) A State plan for aid to the permanently and totally disabled must (1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan[1], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 2 of this Act, aid to families with dependent children under the State plan approved under section 402 of this Act, or aid to the blind under the State plan approved under section 1002 of this Act; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the

[1] P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A).

remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation;[1] (9) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;[2] (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or

[1]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 90-248, "Social Security Amendments of 1967", §248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments made under that act.

See P.L. 93-112, "Rehabilitation Act of 1973", §613(c), for the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to exclusion from income and resources of payments to volunteers under that act.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico, Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (see P.L. 86-372, §202).

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

[2]See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment", with respect to denial of grants-in-aid under certain conditions.

designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title.

PAYMENT TO STATES

SEC. 1403. [42 U.S.C. 1353] (a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

[(1) Stricken.[1]]

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan[2], not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such months; and

(3) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and official administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term training at educational institutions through grants to such insti-

[1] P.L. 97-35, §2184(c)(2)(A), struck out paragraph (1), effective August 13, 1981.

[2] P.L. 97-35, §2184(c)(2)(B), struck out "(including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)", effective August 13, 1981.

tutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of the remainder of such expenditures.[1]

[(4) Stricken.[2]]

(b) The method of computing and paying such amounts shall be as follows:

(1) The Administrator shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a), such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Administrator may find necessary.

(2) The Administrator shall then certify to the Secretary of the Treasury the amount so estimated by the Administrator, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Administrator, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Administrator for such prior quarter: *Provided,* That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause[3] (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Administrator, the amount so certified.

[(c) Repealed.[4]]

OPERATION OF STATE PLANS

SEC. 1404. [42 U.S.C. 1354] In the case of any State plan for aid to the permanently and totally disabled which has been approved by

[1] P.L. 97-35, §2353(l)(1)(A), amended paragraph (3) in its entirety, effective October 1, 1981.
[2] P.L. 97-35, §2353(l)(1)(B), struck out paragraph (4), effective October 1, 1981.
[3] As in original. Possibly, should be "subparagraph".
[4] P.L. 97-35, §2353(l)(2), repealed subsection (c), effective October 1, 1981.

the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1402(b), or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1402(a) to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

DEFINITION

SEC. 1405. [42 U.S.C. 1355] For the purposes of this title, the term "aid to the permanently and totally disabled" means money payments to[1] needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1402 includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need[2] of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

[1] P.L. 97-35, §2184(c)(3), struck out ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of,", effective August 13, 1981.

[2] As in original. Should be "needs".

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.

[TITLE XV—UNEMPLOYMENT COMPENSATION FOR FEDERAL EMPLOYEES][1]

[1]P.L. 83-767 (68 Stat. 1130, approved September 1, 1954), §4(a), added Title XV to the Social Security Act.
P.L. 89-554 (80 Stat. 378, approved September 6, 1966), §8, repealed Title XV. See 5 U.S.C. 8501 et seq..

[TITLE XVI—GRANTS TO STATES FOR AID TO THE AGED, BLIND, OR DISABLED[1]][2]

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APPROPRIATION

SECTION 1601. [42 U.S.C. 1381 note] For the purpose[4] of enabling each State, as far as practicable under the conditions in such State, to furnish financial assistance to needy individuals who are 65 years of age or over, are blind, or are 18 years of age or over and permanently and totally disabled[5], there is hereby authorized to be

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[1]P.L. 97-35, §2184(d)(2), struck out "AND MEDICAL ASSISTANCE", effective August 13, 1981.

P.L. 97-248, §137(b)(6), struck out ", OR FOR SUCH AID FOR THE AGED", effective as if it had been stricken by P.L. 97-35.

[2]This Title XVI of the Social Security Act is administered by the Department of Health and Human Services (formerly the Department of Health, Education, and Welfare). The Office of Family Assistance, Social Security Administration, administers benefit payments under this Title XVI. The Administration for Public Services, Office of Human Development Services, administers social services under this Title XVI.

This Title XVI appears in the United States Code as §§1381 note-1385 note, subchapter XVI, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services with respect to this Title XVI are contained in subtitle A and chapter XIII, Title 45, Code of Federal Regulations.

P.L. 92-603, §§301 and 303, *repealed* this title effective January 1, 1974, except with respect to Guam, Puerto Rico, and the Virgin Islands. The Commonwealth of the Northern Marianas may elect to initiate a Title XVI social services program if it chooses.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 82-183, "Revenue Act of 1951", §618, for the "Jenner Amendment" with respect to prohibition against denial of grants-in-aid under certain conditions.

See P.L. 88-352, "Civil Rights Act of 1964", §601, with respect to prohibition against discrimination in Federally assisted programs.

See P.L. 89-97, "Social Security Amendments of 1965", §121(b), with respect to restrictions on payment to a State receiving payments under Title XIX.

[3]This table of contents does not appear in the law.

[4]P.L. 97-35, §2184(d)(3)(A), struck out "(a)", effective August 13, 1981.

[5]P.L. 97-35, §2184(d)(3)(B), struck out ", [*] (b) of enabling each State, as far as practicable under the conditions in such State, to furnish medical assistance on behalf of individuals who are 65 years of age or over and who are not recipients of aid to the aged, blind, or disabled but whose income and resources are insufficient to meet the costs of necessary medical services, and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-support or self-care", effective August 13, 1981.

[*]P.L. 97-35, §2353(m)(1)(A), inserted "and" before "(b)", effective October 1, 1981.

P.L. 97-35, §2353(m)(1)(B), struck out "and (c) of encouraging each State, as far as practicable under the conditions in such State, to furnish rehabilitation and other services to help individuals referred to in clause (a) or (b) to attain or retain capability for self-support or self-care,", effective October 1, 1981. [All the text except for the closing comma was stricken by P.L. 97-35, §2184(d)(3)(B), effective August 13, 1981.]

appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for aid to the aged, blind, or disabled[1].

STATE PLANS FOR AID TO THE AGED, BLIND, OR DISABLED[2]

SEC. 1602. [42 U.S.C. 1382 note] (a) A State plan for aid to the aged, blind, or disabled[3], must—

(1) except to the extent permitted by the Secretary with respect to services, provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide (A) for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid or assistance under the plan is denied or is not acted upon with reasonable promptness, and (B) that if the State plan is administered in each of the political subdivisions of the State by a local agency and such local agency provides a hearing at which evidence may be presented prior to a hearing before the State agency, such local agency may put into effect immediately upon issuance its decision upon the matter considered at such hearing;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan[4], and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

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[1] P.L. 97-35, §2184(d)(3)(C), struck out ", or for aid to the aged, blind, or disabled and medical assistance for the aged", effective August 13, 1981.

[2] P.L. 97-35, §2184(d)(4)(A), struck out ", OR FOR SUCH AID AND MEDICAL ASSISTANCE FOR THE AGED", effective August 13, 1981.

[3] P.L. 97-35, §2184(d)(4)(B), struck out ", or for aid to the aged, blind, or disabled and medical assistance for the aged", effective August 13, 1981.

[4] P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A).

(7) provide safeguards which permit the use or disclosure of information concerning applicants or recipients only (A) to public officials who require such information in connection with their official duties, or (B) to other persons for purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for aid or assistance under the plan shall have opportunity to do so, and that such aid or assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes aid or assistance to or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) provide a description of the services (if any) which the State agency makes available (using whatever internal organizational arrangement it finds appropriate for this purpose) to applicants for or recipients of aid or assistance under the plan to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) provide that no aid or assistance will be furnished any individual under the plan with respect to any period with respect to which he is receiving assistance under the State plan approved under title I or aid under the State plan approved under part A of title IV or under title X or XIV;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) include reasonable standards, consistent with the objectives of this title, for determining eligibility for and the extent of aid or assistance under the plan; and[1]

(14) provide that the State agency shall, in determining need for aid to the aged, blind, or disabled, take into consideration any other income and resources of an individual claiming such aid, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination with respect to any individual—

(A) if such individual is blind, the State agency (i) shall disregard the first $85 per month of earned income plus one-half of earned income in excess of $85 per month, and (ii) shall, for a period not in excess of 12 months, and may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan,

(B) if such individual is not blind but is permanently and totally disabled, (i) of the first $80 per month of earned income, the State agency may disregard not more than the

[1] P.L. 97-35, §2184(d)(4)(C), inserted "and", effective August 13, 1981.

first $20 thereof plus one-half of the remainder, and (ii) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of any such individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation,

(C) if such individual has attained age 65 and is neither blind nor permanently and totally disabled, of the first $80 per month of earned income the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and

(D) the State agency may, before disregarding the amounts referred to above in this paragraph (14), disregard not more than $7.50 of any income.[1] [2]

[(15), (16), (17) Stricken.[3]]

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[1]See P.L. 97-35, §2184(d)(4)(D), struck out the semicolon and inserted a period, effective August 13, 1981.

[2]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8, with respect to the exclusion from income and resources of the value of food stamps.

See P.L. 90-248, "Social Security Amendments of 1967", §248(c), effective July 1, 1969, with respect to income disregards applicable to Guam, Puerto Rico, and the Virgin Islands.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments made.

See P.L. 93-112, "Rehabilitation Act of 1973", §613(c), with respect to conditional exclusion of wages, allowances, transportation reimbursement, and attendant care costs.

See P.L. 93-113, "Domestic Volunteer Services Act of 1973", §404(g), with respect to the exclusion from income and resources of payments to volunteers.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico, Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (P.L. 86-372, §202).

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

[3]P.L. 97-35, §2184(d)(4)(E), struck out paragraphs (15), (16), and (17), effective August 13, 1981.

Notwithstanding paragraph (3), if on January 1, 1962, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X was different from the State agency which administered or supervised the administration of the plan of such State approved under title I and the State agency which administered or supervised the administration of the plan of such State approved under title XIV, the State agency which administered or supervised the administration of such plan approved under title X may be designated to administer or supervise the administration of the portion of the State plan for aid to the aged, blind, or disabled[1] which relates to blind individuals and a separate State agency may be established or designated to administer or supervise the administration of the rest of such plan; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a), except that he shall not approve any plan which imposes, as a condition of eligibility for aid or assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which[2] excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for such aid and has resided therein continuously for one year immediately preceding the application,[3]; or

(3) any citizenship requirement which excludes any citizen of the United States.

At the option of the State, the plan may provide that manuals and other policy issuances will be furnished to persons without charge for the reasonable cost of such materials, but such provision shall not be required by the Secretary as a condition for the approval of such plan under this title. In the case of any State to which the provisions of section 344 of the Social Security Act Amendments of 1950[4] were applicable on January 1, 1962, and to which the sentence of section 1002(b) following paragraph (2) thereof is applicable on the date on which its State plan for aid to the aged, blind, or disabled[5] was submitted for approval under this title, the Secretary shall approve the plan of such State for aid to the aged, blind, or disabled[6] for purposes of this title, even though it does not meet the requirements of paragraph (14) of subsection (a), if it meets all other requirements of this title for an approved plan for aid to the aged, blind, or disabled[7]; but payments under section 1603 shall be made, in the case

[1] P.L. 97-35, §2184(d)(4)(F), struck out "(or for aid to the aged, blind, or disabled and medical assistance for the aged)", effective August 13, 1981.

[2] P.L. 97-35, §2184(d)(4)(G), struck out "(A) in the case of applicants for aid to the aged, blind, or disabled", effective August 13, 1981.

[3] As in original. P.L. 97-35, §2184(d)(4)(H), struck out "and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State", effective August 13, 1981. Comma should be stricken also.

[4] P.L. 87-543, §136(b), [76 Stat. 197], repealed §344, effective July 25, 1962.

[5] P.L. 97-35, §2184(d)(4)(I), struck out "(or for aid to the aged, blind, or disabled and medical assistance for the aged)", effective August 13, 1981.

[6] P.L. 97-35, §2184(d)(4)(I), struck out "(or for aid to the aged, blind, or disabled and medical assistance for the aged)", effective August 13, 1981.

[7] P.L. 97-35, §2184(d)(4)(I), struck out "(or for aid to the aged, blind, or disabled and medical assistance for the aged)", effective August 13, 1981.

of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1603 under a plan approved under this section without regard to the provisions of this sentence.

(c) Subject to the last sentence of subsection (a), nothing in this title shall be construed to permit a State to have in effect with respect to any period more than one State plan approved under this title.

PAYMENTS TO STATES

SEC. 1603. [42 U.S.C. 1383 note] (a) From the sums appropriated therefor, the Secretary shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing October 1, 1962—

[(1) Stricken.[1]]

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan[2], not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the aged, blind, or disabled for such month; plus

(B)[3] one-half of the amount by which such expenditures exceed the maximum which may be counted under clause[4] (A), not counting so much of any expenditure with respect to any month as exceeds[5] the product of $45 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month[6]; and

[(3) Stricken.[7]]

(4) in the case of any State, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health and Human Services for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for the training (including both short- and long-term train-

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[1]P.L. 97-35, §2184(d)(5)(A), struck out paragraph (1), effective August 13, 1981.

[2]P.L. 97-35, §2184(d)(5)(B), struck [from paragraph (2)(A) of §1603] "(including expenditures for premiums under part B of title XVIII for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)", effective August 13, 1981. Executed as if §2184(d)(5)(B) reads "paragraph (2)(A) of section 1603(a)".

[3]P.L. 97-35, §2184(d)(5)(C), struck [from paragraph (2)(B) of §1603] "the larger of the following amounts: (i)", effective August 13, 1981. Executed as if §2184(d)(5)(C) reads "paragraph (2)(B) of section 1603(a)".

[4]As in original. Possibly, should be "subparagraph".

[5]P.L. 97-35, §2184(d)(5)(C), struck [from paragraph (2)(B) of §1603] "(I)", effective August 13, 1981. Executed as if §2184(d)(5)(C) reads "paragraph (2)(B) of section 1603(a)".

[6]P.L. 97-35, §2184(d)(5)(C), struck [from paragraph (2)(B) of §1603] ", or (II) if smaller, the total expended as aid to the aged, blind, or disabled in the form of medical or any other type of remedial care with respect to such month plus the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as aid to the aged, blind, or disabled under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of aid to the aged, blind, or disabled for such month", effective August 13, 1981. Executed as if §2184(d)(5)(C) reads "paragraph (2)(B) of section 1603(a)".

[7]P.L. 97-35, §2184(d)(5)(A), struck out paragraph (3), effective August 13, 1981.

ing at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions) of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of the remainder of such expenditures.[1]

[(5) Stricken.[2]]

(b)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsection (a) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay, in such installments as he may determine, to the State the amount so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection.

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to aid or assistance furnished under the State plan, but excluding any amount of such aid or assistance recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased, shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

[(c) Repealed.[3]]

[(d) Stricken.[4]]

OPERATION OF STATE PLANS

SEC. 1604. [42 U.S.C. 1384 note] If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1602; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will

[1] P.L. 97-35, §2353(m)(2)(B), amended paragraph (4) in its entirety, effective October 1, 1981.
[2] P.L. 97-35, §2353(m)(2)(C), struck out paragraph (5), effective October 1, 1981.
[3] P.L. 97-35, §2353(m)(3), repealed subsection (c), effective October 1, 1981.
[4] P.L. 97-35, §2184(d)(5)(D), struck out subsection (d), effective August 13, 1981.

be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

DEFINITIONS

SEC. 1605. [42 U.S.C. 1385 note] (a)[1] For purposes of this title, the term "aid to the aged, blind, or disabled" means money payments to[2] needy individuals who are 65 years of age or older, are blind, or are 18 years of age or over and permanently and totally disabled, but such term does not include—

(1) any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(2) any such payments to or care in behalf of any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan approved under section 1602 includes provision for—

(A) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(B) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the aged, blind, or disabled to be paid (and in conjunction with other income and resources), meet all the need[3] of the individuals with respect to whom such payments are made;

(C) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(D) periodic review by such State agency of the determination under clause[4] (A) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1111, if and when it appears that such action will best serve the interests of such needy individual; and

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[1] As in original; "(a)" should be stricken.

[2] P.L. 97-35, §2184(d)(6)(A), struck out ", or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of,", effective August 13, 1981.

[3] As in original. Should be "needs".

[4] As in original. Possibly, should be "subparagraph".

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause[1] (A) for any individual with respect to whom it is made.

At the option of a State (if its plan approved under this title so provides), such term (i) need not include money payments to an individual who has been absent from such State for a period in excess of ninety consecutive days (regardless of whether he has maintained his residence in such State during such period) until he has been present in such State for thirty consecutive days in the case of such an individual who has maintained his residence in such State during such period or ninety consecutive days in the case of any other such individual, and (ii) may include rent payments made directly to a public housing agency on behalf of a recipient or a group or groups of recipients of aid under such plan.[2]

[1]As in original. Possibly, should be "subparagraph".
[2]P.L. 97-35, §2184(d)(6)(B), struck out subsection (b), effective August 13, 1981.

TITLE XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED[1]

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[1]This Title XVI of the Social Security Act is administered by the Social Security Administration, Department of Health and Human Services (formerly Department of Health, Education, and Welfare).

This Title XVI appears in the United States Code as §§1381-1383c, subchapter XVI, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services with respect to this Title XVI are contained in chapter III, Title 20, Code of Federal Regulations.

See P.L. 88-525, "Food Stamp Act of 1977", §11(i), with respect to the acceptance by social security offices of applications for participation in the food stamp program from recipients of supplemental security income.

P.L. 94-241, [Covenant To Establish Northern Mariana Islands], §1 (§502 of Covenant), approved March 24, 1976, provides that this Title XVI is applicable to the Northern Mariana Islands, except as otherwise provided. Effective 11 A.M. of January 9, 1978, Northern Mariana Islands local time (Presidential Proclamation 4534, signed October 24, 1977; 42 FR 56593, October 27, 1977).

See P.L. 96-265, "Social Security Amendments of 1980", §312, with respect to the Secretary's report to Congress on the effect of certain amendments affecting claims for disability insurance benefits.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency.

[2]This table of contents does not appear in the law.

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PURPOSE; APPROPRIATIONS

SEC. 1601. [42 U.S.C. 1381] For the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this title.

BASIC ELIGIBILITY FOR BENEFITS

SEC. 1602. [42 U.S.C. 1381a] Every aged, blind, or disabled individual who is determined under part A to be eligible on the basis of his income and resources shall, in accordance with and subject to the provisions of this title, be paid benefits by the Secretary of Health, Education, and Welfare.

PART A—DETERMINATION OF BENEFITS

ELIGIBILITY FOR AND AMOUNT OF BENEFITS[1]

Definition of Eligible Individual

SEC. 1611. [42 U.S.C. 1382] (a)(1) Each aged, blind, or disabled individual who does not have an eligible spouse and—

(A) whose income, other than income excluded pursuant to section 1612(b), is at a rate of not more than $1,752 (or, if greater,

[1]See P.L. 93-66, [Cost-of-Living Increase in Social Security Benefits], §211, with respect to supplemental security income benefits for essential persons.

the amount determined under section 1617) for the calendar year 1974 or any calendar year thereafter, and

(B) whose resources, other than resources excluded pursuant to section 1613(a), are not more than (i) in case such individual has a spouse with whom he is living, $2,250, or (ii) in case such individual has no spouse with whom he is living, $1,500,

shall be an eligible individual for purposes of this title.

(2) Each aged, blind, or disabled individual who has an eligible spouse and—

(A) whose income (together with the income of such spouse), other than income excluded pursuant to section 1612(b), is at a rate of not more than $2,628 (or, if greater, the amount determined under section 1617) for the calendar year 1974, or any calendar year thereafter, and

(B) whose resources (together with the resources of such spouse), other than resources excluded pursuant to section 1613(a), are not more than $2,250,

shall be an eligible individual for purposes of this title.

Amounts of Benefits[1]

(b)(1) The benefit under this title for an individual who does not have an eligible spouse shall be payable at the rate of $1,752 (or, if greater, the amount determined under section 1617) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1612(b), of such individual.

(2) The benefit under this title for an individual who has an eligible spouse shall be payable at the rate of $2,628 (or, if greater, the amount determined under section 1617) for the calendar year 1974 and any calendar year thereafter, reduced by the amount of income, not excluded pursuant to section 1612(b), of such individual and spouse.

(c)(1) An individual's eligibility for a benefit under this title for a month shall be determined on the basis of the individual's (and eligible spouse's, if any) income, resources, and other relevant characteristics in such month, and, except as provided in paragraphs (2), (3), and (4)[2], the amount of such benefit shall be determined for

[1]The following amounts of benefits have been applicable: [Changes have been made by public law, as indicated, or by publication in the Federal Register (in the volume, and at the page location indicated).]

Effective Month	Essential Person	Individual	Individual and spouse	Authority
January 1974	$ 840.00	$ 1,680.00	$ 2,520.00	PL 93-233, §4(a)
July 1974	876.00	1,752.00	2,628.00	PL 93-233, §4(b)
July 1975	946.80	1,892.40	2,839.20	40 FR 22289 40 FR 23352
July 1976	1,008.00	2,013.60	3,021.60	41 FR 19999
July 1977	1,068.00	2,133.60	3,200.40	42 FR 24210
July 1978	1,137.60	2,272.80	3,409.20	43 FR 20867
July 1979	1,250.40	2,498.40	3,747.60	44 FR 28423
July 1980	1,430.40	2,856.00	4,284.00	45 FR 31781
July 1981	1,591.20	3,176.40	4,764.00	46 FR 27076
July 1982	1,710.00	3,411.60	5,116.80	47 FR 20863
July 1983	1,830.00	3,651.60	5,476.80	48 FR 27150
January 1984	1,884.00	3,768.00	5,664.00	48 FR 27150

[2]P.L. 97-248, §183(a)(1), struck out "paragraph (2)" and substituted "paragraphs (2), (3), and (4)", effective October 1, 1982.

such month on the basis of income and other characteristics in the first or, if the Secretary so determines, second month preceding such month. Eligibility for and the amount of such benefits shall be redetermined at such time or times as may be provided by the Secretary.

(2) The amount of such benefit for the month in which an application for benefits becomes effective (or, if the Secretary so determines, for such month and the following month) and for any month immediately following a month of ineligibility for such benefits (or, if the Secretary so determines, for such month and the following month) shall—

(A) be determined on the basis of the income of the individual and the eligible spouse, if any, of such individual and other relevant circumstances in such month; and

(B) in the case of the month in which an application becomes effective or the first month following a period of ineligibility, if such application becomes effective, or eligibility is restored, after the first day of such month, bear the same ratio to the amount of the benefit which would have been payable to such individual if such application had become effective, or eligibility had been restored, on the first day of such month as the number of days in such month including and following the effective date of such application or restoration of eligibility bears to the total number of days in such month.[1]

(3) For purposes of this subsection, an increase in the benefit amount payable under title II (over the amount payable in the preceding month, or, at the election of the Secretary, the second preceding month) to an individual receiving benefits under this title shall be included in the income used to determine the benefit under this title of such individual for any month which is—

(A) the first month in which the benefit amount payable to such individual under this title is increased pursuant to section 1617, or

(B) at the election of the Secretary, the month immediately following such month.[2]

(4)(A) Notwithstanding paragraph (3), if the Secretary determines that reliable information is currently available with respect to the income and other circumstances of an individual for a month (including information with respect to a class of which such individual is a member and information with respect to scheduled cost-of-living adjustments under other benefit programs), the benefit amount of such individual under this title for such month may be determined on the basis of such information.

(B) The Secretary shall prescribe by regulation the circumstances in which information with respect to an event may be taken into account pursuant to subparagraph (A) in determining benefit amounts under this title.[3]

(5)[4] For purposes of this subsection, an application of an individual for benefits under this title shall be effective on the later of—

(A) the date such application is filed, or

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[1] P.L. 97-248, §181(a), amended paragraph (2) in its entirety, effective October 1, 1982.
[2] P.L. 97-248, §183(a)(3), added this paragraph (3), effective October 1, 1982.
[3] P.L. 97-248, §183(a)(3), added this paragraph (4), effective October 1, 1982.
[4] P.L. 97-248, §181(a), amended paragraph (3) in its entirety, effective October 1, 1982.
P.L. 97-248, §183(a)(2), redesignated this paragraph (3) as paragraph (5), effective October 1, 1982.

(B) the date such individual first becomes eligible for such benefits with respect to such application.

(6)[1] The Secretary may waive the limitations specified in subparagraphs (A) and (B) of subsection (e)(1) on an individual's eligibility and benefit amount for a month (to the extent either such limitation is applicable by reason of such individual's presence throughout such month in a hospital, extended care facility, nursing home, or intermediate care facility) if such waiver would promote the individual's removal from such institution or facility. Upon waiver of such limitations, the Secretary shall apply, to the month preceding the month of removal, or, if the Secretary so determines, the two months preceding the month of removal, the benefit rate that is appropriate to such individual's living arrangement subsequent to his removal from such institution or facility.[2]

Special Limits on Gross Income

(d) The Secretary may prescribe the circumstances under which, consistently with the purposes of this title, the gross income from a trade or business (including farming) will be considered sufficiently large to make an individual ineligible for benefits under this title. For purposes of this subsection, the term "gross income" has the same meaning as when used in chapter 1 of the Internal Revenue Code of 1954[3].

Limitation on Eligibility of Certain Individuals

(e)(1)(A) Except as provided in subparagraphs (B), (C), and (D)[4], no person shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if throughout such month he is an inmate of a public institution.

(B) In any case where an eligible individual or his eligible spouse (if any) is, throughout any month, in a hospital, extended care facility, nursing home, or intermediate care facility receiving payments (with respect to such individual or spouse) under a State plan approved under title XIX, the benefit under this title for such individual for such month shall be payable—

(i) at a rate not in excess of $300 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who does not have an eligible spouse;

(ii) in the case of an individual who has an eligible spouse, if only one of them is in such a hospital, home or facility throughout such month, at a rate not in excess of the sum of—

(I) the rate of $300 per year (reduced by the amount of any income, not excluded pursuant to section 1612(b), of the one who is in such hospital, home, or facility), and

(II) the applicable rate specified in subsection (b)(1) (reduced by the amount of any income, not excluded pursuant

[1] P.L. 97-248, §183(a)(2), redesignated paragraph (4) as paragraph (6), effective October 1, 1982.
[2] P.L. 97-35, §2341(a), amended subsection (c) in its entirety, effective with respect to months after March 1982.
[3] P.L. 83-591.
[4] P.L. 98-21, §403(a)(1), struck out "subparagraph (B) and (C)" and substituted "subparagraphs (B), (C), and (D)", effective with respect to months after April 1983.

to section 1612(b), of the other); and

(iii) at a rate not in excess of $600 per year (reduced by the amount of any income not excluded pursuant to section 1612(b)) in the case of an individual who has an eligible spouse, if both of them are in such a hospital, home, or facility throughout such month.

(C) As used in subparagraph (A), the term "public institution" does not include a publicly operated community residence which serves no more than 16 residents.[1]

(D) A person may be an eligible individual or eligible spouse for purposes of this title with respect to any month throughout which he is a resident of a public emergency shelter for the homeless (as defined in regulations which shall be prescribed by the Secretary); except that no person shall be an eligible individual or eligible spouse by reason of this subparagraph more than three months in any 12-month period.[2]

(2) No person shall be an eligible individual or eligible spouse for purposes of this title if, after notice to such person by the Secretary that it is likely that such person is eligible for any payments of the type enumerated in section 1612(a)(2)(B), such person fails within 30 days to take all appropriate steps to apply for and (if eligible) obtain any such payments.

(3)(A) No person who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall be an eligible individual or eligible spouse for purposes of this title with respect to any month if such individual is medically determined to be a drug addict or an alcoholic unless such individual is undergoing any treatment that may be appropriate for his condition as a drug addict or alcoholic (as the case may be) at an institution or facility approved for purposes of this paragraph by the Secretary (so long as such treatment is available) and demonstrates that he is complying with the terms, conditions, and requirements of such treatment and with requirements imposed by the Secretary under subparagraph (B).

(B) The Secretary shall provide for the monitoring and testing of all individuals who are receiving benefits under this title and who as a condition of such benefits are required to be undergoing treatment and complying with the terms, conditions, and requirements thereof as described in subparagraph (A), in order to assure such compliance and to determine the extent to which the imposition of such requirement is contributing to the achievement of the purposes of this title. The Secretary shall annually submit to the Congress a full and complete report on his activities under this paragraph.

(4) No benefit shall be payable under this title, except as provided in section 1619 (or section 1616(c)(3)), with respect to an eligible individual or his eligible spouse who is an aged, blind, or disabled individual solely by application of section 1614(a)(3)(F) for any month, after the third month, in which he engages in substantial gainful activity during the fifteen-month period following the end of his trial work period determined by application of section 1614(a)(4)(D)(i).

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[1]See P.L. 96-598, [Tread Rubber Excise Tax Refunds], §4, with respect to the Boundary County Restorium, Bonner's Ferry, Idaho.

[2]P.L. 98-21, §403(a)(2), added subparagraph (D), effective with respect to months after April 1983.

Suspension of Payments to Individuals Who Are Outside the United States

(f) Notwithstanding any other provision of this title, no individual shall be considered an eligible individual for purposes of this title for any month during all of which such individual is outside the United States (and no person shall be considered the eligible spouse of an individual for purposes of this title with respect to any month during all of which such person is outside the United States). For purposes of the preceding sentence, after an individual has been outside the United States for any period of 30 consecutive days, he shall be treated as remaining outside the United States until he has been in the United States for a period of 30 consecutive days.

Certain Individuals Deemed To Meet Resources Test

(g) In the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title I, X, XIV, or XVI,

(2) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(3) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or eligible spouse with respect to whom supplemental security income benefits are payable,

the resources of such individual or such individual and his spouse (as the case may be) shall be deemed not to exceed the amount specified in sections 1611(a)(1)(B) and 1611(a)(2)(B) during any period that the resources of such individual or individuals[1] and his spouse (as the case may be) does not exceed the maximum amount of resources specified in the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973.

Certain Individuals Deemed To Meet Income Test

(h) In determining eligibility for, and the amount of, benefits payable under this section in the case of any individual or any individual and his spouse (as the case may be) who—

(1) received aid or assistance for December 1973 under a plan of a State approved under title X or XVI,

(2) is blind under the definition of that term in the plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973,

(3) has, since December 31, 1973, continuously resided in the State under the plan of which he or they received such aid or assistance for December 1973, and

(4) has, since December 31, 1973, continuously been (except for periods not in excess of six consecutive months) an eligible individual or an eligible spouse with respect to whom supplemental security income benefits are payable,

there shall be disregarded an amount equal to the greater of (A) the maximum amount of any earned or unearned income which could

[1] As in original. Should be "individual".

have been disregarded under the State plan, as in effect for October 1972, under which he or they received such aid or assistance for December 1973, and (B) the amount which would be required to be disregarded under section 1612 without application of this subsection.

INCOME

Meaning of Income

SEC. 1612. [42 U.S.C. 1382a] (a) For purposes of this title, income means both earned income and unearned income; and—

(1) earned income means only—

(A) wages as determined under section 203(f)(5)(C);

(B) net earnings from self-employment, as defined in section 211 (without the application of the second and third sentences following subsection (a)(11), and the last paragraph of subsection (a)), including earnings for services described in paragraphs (4), (5), and (6) of subsection (c);

(C) any refund of Federal income taxes made by reason of section 43 of the Internal Revenue Code of 1954[1] (relating to earned income credit) and any payment made by an employer under section 3507 of such Code[2] (relating to advance payment of earned income credit); and

(D) remuneration received for services performed in a sheltered workshop or work activities center; and

(2) unearned income means all other income, including—

(A) support and maintenance furnished in cash or kind; except that (i) in the case of any individual (and his eligible spouse, if any) living in another person's household and receiving support and maintenance in kind from such person, the dollar amounts otherwise applicable to such individual (and spouse) as specified in subsections (a) and (b) of section 1611 shall be reduced by 33⅓ percent in lieu of including such support and maintenance in the unearned income of such individual (and spouse) as otherwise required by this subparagraph,[3] (ii) in the case of any individual or his eligible spouse who resides in a nonprofit retirement home or similar nonprofit institution, support and maintenance shall not be included to the extent that it is furnished to such individual or such spouse without such institution receiving payment therefor (unless such institution has expressly undertaken an obligation to furnish full support and maintenance to such individual or spouse without any current or future payment therefor) or payment therefor is made by another nonprofit organization, and (iii) support and maintenance shall not be included and the provisions of clause (i) shall not be applicable in the case of any individual (and his eligible spouse, if any) for the period which begins with the month in which such individual (or such individual and his eligible spouse) began to receive support and mainte-

[1] P.L. 83-591.

[2] See P.L. 83-591, "Internal Revenue Code of 1954", §3507, p. 887.

[3] See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(c), with respect to individuals receiving services under the "Congregate Housing Services Act of 1978" [P.L. 95-557, Title IV].

nance while living in a residential facility (including a private household) maintained by another person and ends with the close of the month in which such individual (or such individual and his eligible spouse) ceases to receive support and maintenance while living in such a residential facility (or, if earlier, with the close of the seventeenth month following the month in which such period began), if, not more than 30 days prior to the date on which such individual (or such individual and his eligible spouse) began to receive support and maintenance while living in such a residential facility, (I) such individual (or such individual and his eligible spouse) were residing in a household maintained by such individual (or by such individual and others) as his or their own home, (II) there occurred within the area in which such household is located (and while such individual, or such individual and his spouse, were residing in the household referred to in subclause (I)) a catastrophe on account of which the President declared a major disaster to exist therein for purposes of the Disaster Relief Act of 1974[1], and (III) such individual declares that he (or he and his eligible spouse) ceased to continue living in the household referred to in subclause (II) because of such catastrophe;[2]

(B) any payments received as an annuity, pension, retirement, or disability benefit, including veterans' compensation and pensions, workmen's compensation payments, old-age, survivors, and disability insurance benefits, railroad retirement annuities and pensions, and unemployment insurance benefits;

(C) prizes and awards;

(D) the proceeds of any life insurance policy to the extent that they exceed the amount expended by the beneficiary for purposes of the insured individual's last illness and burial or $1,500, whichever is less;

(E) gifts (cash or otherwise), support and alimony payments, and inheritances; and

(F) rents, dividends, interest, and royalties.

Exclusions From Income[3]

[1]P.L. 93-288.

[2]See 10 U.S.C. 2546 with respect to shelter for the homeless at military installations.

[3]See P.L. 79-396, "National School Lunch Act", §12(e), with respect to exclusion from income and resources of assistance to children.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 89-642, "Child Nutrition Act of 1966", §11(b), with respect to the exclusion from income and resources of the value of assistance to children.

See P.L. 91-646, "Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970", §216, with respect to exclusion from income of payments under that act.

See P.L. 93-112, "Rehabilitation Act of 1973", §613(c), with respect to the conditional exclusion from income of wages, allowances, transportation reimbursement, and attendant care provided to handicapped individuals under community service employment pilot programs.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to the exclusion from income and resources of payments to volunteers.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 94-375, "Housing Authorization Act of 1976", §2(h), with respect to exclusion from

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

(1) subject to limitations (as to amount or otherwise) prescribed by the Secretary, if such individual is a child who is, as determined by the Secretary, a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment, the earned income of such individual;

(2)(A) the first $240 per year (or proportionately smaller amounts for shorter periods) of income (whether earned or unearned) other than income which is paid on the basis of the need of the eligible individual;

(B) monthly (or other periodic) payments received by any individual, under a program established prior to July 1, 1973, if such payments are made by the State of which the individual receiving such payments is a resident, and if eligibility of any individual for such payments is not based on need and is based solely on attainment of age 65 and duration of residence in such State by such individual;

(3)(A) the total unearned income of such individual (and such spouse, if any) in a month[1] which, as determined in accordance with criteria prescribed by the Secretary, is received too infrequently or irregularly to be included, if such income so received does not exceed $20[2] in such month[3], and (B) the total earned

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income and resources of the value of assistance paid with respect to a dwelling unit, for purposes of this title of this act; also see:

P.L. 73-479, "National Housing Act", §§231(a), (b), and (f); 235(a); 236(a) and (j)(6); and 237(a) and (b);

P.L. 75-412, "United States Housing Act of 1937", §§8(j) and 9(b);

P.L. 81-171, "Housing Act of 1949", §521(a)(1)(B), (C), and (E); and

P.L. 89-117, "Housing and Urban Development Act of 1965", §101.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 95-557, "Housing and Community Development Amendments of 1978", §410(b), with respect to exclusion from income of services (but not of wages) provided to a public housing resident or to a resident of a housing project assisted under the "Housing Act of 1959" (P.L. 86-372, §202).

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-377, [Continuing Appropriations for Fiscal Year 1983], §128, with respect to exclusion from income of certain home energy assistance.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

[1]P.L. 97-35, §2341(b)(1), struck out "calendar quarter" and substituted "month", effective with respect to months after March 1982.

[2]P.L. 97-35, §2341(b)(3), struck out "$60" and substituted "$20", effective with respect to months after March 1982.

[3]P.L. 97-35, §2341(b)(2), struck out "quarter" and substituted "month", effective with respect to months after March 1982.

income of such individual (and such spouse, if any) in a month[1] which, as determined in accordance with such criteria, is received too infrequently or irregularly to be included, if such income so received does not exceed $10[2] in such month[3];

(4)(A) if such individual (or such spouse) is blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1002 or 1602) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof, (ii) an amount equal to any expenses reasonably attributable to the earning of any income, and (iii) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan,

(B) if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this title (or aid under a State plan approved under section 1402 or 1602) for the month before the month in which he attained age 65), (i) the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, (ii) such additional amounts of earned income of such individual (for purposes of determining the amount of his or her benefits under this title and of determining his or her eligibility for such benefits for consecutive months of eligibility after the initial month of such eligibility), if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe, (iii) one-half of the amount of earned income not excluded after the application of the preceding provisions of this subparagraph, and (iv) such additional amounts of other income, where such individual has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan, or

(C) if such individual (or such spouse) has attained age 65 and is not included under subparagraph (A) or (B), the first $780 per year (or proportionately smaller amounts for shorter periods) of earned income not excluded by the preceding paragraphs of this subsection, plus one-half of the remainder thereof;

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[1] P.L. 97-35, §2341(b)(1), struck out "calendar quarter" and substituted "month", effective with respect to months after March 1982.

[2] P.L. 97-35, §2341(b)(4), struck out "$30" and substituted "$10", effective with respect to months after March 1982.

[3] P.L. 97-35, §2341(b)(2), struck out "quarter" and substituted "month", effective with respect to months after March 1982.

(5) any amount received from any public agency as a return or refund of taxes paid on real property or on food purchased by such individual (or such spouse);

(6) assistance, furnished to or on behalf of such individual (and spouse), which is based on need and furnished by any State or political subdivision of a State;

(7) any portion of any grant, scholarship, or fellowship received for use in paying the cost of tuition and fees at any educational (including technical or vocational education) institution;

(8) home produce of such individual (or spouse) utilized by the household for its own consumption;

(9) if such individual is a child[1] one-third of any payment for his support received from an absent parent;

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief Act of 1974[2] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President;

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and

(13) any support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which[3] is (i) assistance furnished in kind by a private nonprofit agency, or (ii) assistance furnished by a supplier of home heating oil or gas, by an entity providing home energy whose revenues are primarily derived on a rate-of-return basis regulated by a State or Federal governmental entity, or by a municipal utility providing home energy.[4]

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[1] As in original. Comma omitted.

[2] P.L. 93-288.

[3] P.L. 98-21, §404(a), struck out "assistance received to assist in meeting the costs of home energy, including both heating and cooling, which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) (A) is based on need for such assistance, and (B)" and substituted "support or maintenance assistance furnished to or on behalf of such individual (and spouse if any) which (as determined under regulations of the Secretary by such State agency as the chief executive officer of the State may designate) is based on need for such support or maintenance, including assistance received to assist in meeting the costs of home energy (including both heating and cooling), and which", effective with respect to months which begin after April 1983 and end before October 1, 1984.

[4] P.L. 97-424, §545(a)(3), added paragraph (13), effective with respect to home energy assistance received in months beginning on or after January 6, 1983, and prior to July 1, 1985.

See P.L. 97-424, "Surface Transportation Assistance Act of 1982", §545(d), with respect to the implementation, results, and recommendations regarding this provision.

RESOURCES

Exclusions From Resources[1]

SEC. 1613. [42 U.S.C. 1382b] (a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

(1) the home (including the land that appertains thereto);

(2)(A)[2] household goods, personal effects, and an automobile, to the extent that their total value does not exceed such amount as the Secretary determines to be reasonable; and

(B) the value of any burial space (subject to such limits as to size or value as the Secretary may by regulation prescribe) held for the purpose of providing a place for the burial of the individual, his spouse, or any other member of his immediate family;[3]

(3) other property which, as determined in accordance with and subject to limitations prescribed by the Secretary, is so essential to the means of self-support of such individual (and such spouse) as to warrant its exclusion;

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[1]See P.L. 79-396, "National School Lunch Act", §12(e), with respect to exclusion from income and resources of assistance to children.

See P.L. 81-171, "Housing Act of 1949", §521(a)(1)(E), with respect to exclusion from income and resources of certain assistance rendered to provide occupant-owned, rental and cooperative housing.

See P.L. 88-525, "Food Stamp Act of 1977", §8(b), with respect to exclusion from income and resources of the value of food stamps.

See P.L. 89-642, "Child Nutrition Act of 1966", §11(b), with respect to the exclusion from income and resources of the value of assistance to children.

See P.L. 93-113, "Domestic Volunteer Service Act of 1973", §404(g), with respect to exclusion from income and resources of payments to volunteers.

See P.L. 93-134, [Indians—Judgments—Indian Claims Commission], §§7 and 8, with respect to exclusion from income and resources of certain judgment funds to any Indian tribe.

See P.L. 94-114, [Indian Tribes—Submarginal Lands], §6, with respect to exclusion from income and resources of property and receipts from submarginal land to certain Indians.

See P.L. 94-375, "Housing Authorization Act of 1976", §2(h), with respect to exclusion from income and resources of the value of assistance paid with respect to a dwelling unit, for purposes of this title of this act; also see:

P.L. 73-479, "National Housing Act", §§231(a), (b), and (f); 235(a); 236(a) and (j)(6); and 237(a) and (b);

P.L. 75-412, "United States Housing Act of 1937", §§8(j) and 9(b);

P.L. 81-171, "Housing Act of 1949", §521(a)(1)(B), (C), and (E); and

P.L. 89-117, "Housing and Urban Development Act of 1965", §101.

See P.L. 95-498, [Pueblo of Santa Ana Indians, New Mexico], §6, with respect to an income and resources exclusion applicable to the Pueblo of Santa Ana, New Mexico.

See P.L. 95-499, [Pueblo of Zia, New Mexico Indians], §6, with respect to an income and resources exclusion applicable to the Pueblo of Zia Indians, New Mexico.

See P.L. 97-371, [Wyandot Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-372, [Shawnee Tribe of Indians], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-376, [Indians, Miami Tribe of Oklahoma and Indiana], §7, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-402, [Clallam Tribe of Indians], §6, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-403, [Pembina Chippewa Indians], §9, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 97-408, [Blackfeet and Gros Ventre Tribes of Indians], §§6 and 8(d), with respect to exclusion from income and limited exclusion from resources of certain judgment funds.

See P.L. 97-436, [Confederated Tribes of the Warm Springs Reservation], §4(b), with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-64, [Per Capita Payments to Indians], §2(a), with respect to exclusion from income and resources of per capita payments to Indians.

See P.L. 98-123, [Red Lake Band of Chippewa Indians], §3, with respect to exclusion from income and resources of certain judgment funds.

See P.L. 98-124, [Assiniboine Tribe; Montana], §5, with respect to exclusion from income and resources of certain judgment funds.

[2]P.L. 97-248, §185(a), inserted "(A)", effective November 1, 1982.

[3]P.L. 97-248, §185(a), added subparagraph (B), effective November 1, 1982.

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 7(h) and section 8(c) of the Alaska Native Claims Settlement Act[1]; and

(6) assistance referred to in section 1612(b)(11)[2] for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1612(b)(12).

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

Disposition of Resources

(b) The Secretary shall prescribe the period or periods of time within which, and the manner in which, various kinds of property must be disposed of in order not to be included in determining an individual's eligibility for benefits. Any portion of the individual's benefits paid for any such period shall be conditioned upon such disposal; and any benefits so paid shall (at the time of the disposal) be considered overpayments to the extent they would not have been paid had the disposal occurred at the beginning of the period for which such benefits were paid.

DISPOSAL OF RESOURCES FOR LESS THAN FAIR MARKET VALUE[3]

(c)(1) In determining the resources of an individual (and his eligible spouse, if any) there shall be included (but subject to the exclusions under subsection (a)) any resource (or interest therein) owned by such individual or eligible spouse within the preceding 24 months if such individual or eligible spouse gave away or sold such resource or interest at less than fair market value of such resource or interest for the purpose of establishing eligibility for benefits or assistance under this Act.

(2) Any transaction described in paragraph (1) shall be presumed to have been for the purpose of establishing eligibility for benefits or assistance under this Act unless such individual or eligible spouse furnishes convincing evidence to establish that the transaction was exclusively for some other purpose.

(3) For purposes of paragraph (1) the value of such a resource or interest shall be the fair market value of such resource or interest at the time it was sold or given away, less the amount of compensation received for such resource or interest, if any.

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[1] P.L. 92-203.
[2] P.L. 93-288, "Disaster Relief Act of 1974".
[3] P.L. 96-611, §5(a), added subsection (c), effective with respect to applications for benefits under Title XVI of the Social Security Act filed on or after March 1, 1981.
Catchline as in original.

Funds Set Aside for Burial Expenses[1]

(d)(1) In determining the resources of an individual, there shall be excluded an amount, not in excess of $1,500 each with respect to such individual and his spouse (if any), that is separately identifiable and has been set aside to meet the burial and related expenses of such individual or spouse if the inclusion of any portion of such amount or amounts would cause the resources of such individual, or of such individual and spouse, to exceed the limits specified in paragraph (1) or (2) (whichever may be applicable) of section 1611(a).

(2) The amount of $1,500, referred to in paragraph (1), with respect to an individual shall be reduced by an amount equal to (A) the total face value of all insurance policies on his life which are owned by him or his spouse and the cash surrender value of which has been excluded in determining the resources of such individual or of such individual and his spouse, and (B) the total of any amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial and related expenses of such individual or his spouse.

(3) If the Secretary finds that any part of the amount excluded under paragraph (1) was used for purposes other than those for which it was set aside, he shall reduce any future benefits payable to the eligible individual (or to such individual and his spouse) by an amount equal to such part.

(4) The Secretary may provide by regulations that whenever an amount set aside to meet burial and related expenses is excluded under paragraph (1) in determining the resources of an individual, any interest earned or accrued on such amount (and left to accumulate), and any appreciation in the value of prepaid burial arrangements for which such amount was set aside, shall also be excluded (to such extent and subject to such conditions or limitations as such regulations may prescribe) in determining the resources (and the income) of such individual.

MEANING OF TERMS

Aged, Blind, or Disabled Individual

SEC. 1614. [42 U.S.C. 1382c] (a)(1) For purposes of this title, the term "aged, blind, or disabled individual" means an individual who—

(A) is 65 years of age or older, is blind (as determined under paragraph (2)), or is disabled (as determined under paragraph (3)), and

(B) is a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act[2]).

(2) An individual shall be considered to be blind for purposes of this title if he has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye which is accompanied by

[1] P.L. 97-248, §185(b), added subsection (d), effective November 1, 1982.
[2] P.L. 82-414.

a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees shall be considered for purposes of the first sentence of this subsection as having a central visual acuity of 20/200 or less. An individual shall also be considered to be blind for purposes of this title if he is blind as defined under a State plan approved under title X or XVI as in effect for October 1972 and received aid under such plan (on the basis of blindness) for December 1973, so long as he is continuously blind as so defined.

(3)(A) An individual shall be considered to be disabled for purposes of this title if he is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months (or, in the case of a child under the age of 18, if he suffers from any medically determinable physical or mental impairment of comparable severity).

(B) For purposes of subparagraph (A), an individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), "work which exists in the national economy" means work which exists in significant numbers either in the region where such individual lives or in several regions of the country.

(C) For purposes of this paragraph, a physical or mental impairment is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques.

(D) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. In determining whether an individual is able to engage in substantial gainful activity by reason of his earnings, where his disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, there shall be excluded from such earnings an amount equal to the cost (to such individual) of any attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions; except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe. Notwithstanding the provisions of subparagraph (B), an individual whose services or earnings meet such criteria, except for purposes of subparagraph (F) or paragraph (4), shall be found not to be disabled.

(E) Notwithstanding the provisions of subparagraphs (A) through (D), an individual shall also be considered to be disabled for purposes of this title if he is permanently and totally disabled as defined under a State plan approved under title XIV or XVI as in effect for October 1972 and received aid under such plan (on the basis of disability) for December 1973 (and for at least one month prior to July 1973), so long as he is continuously disabled as so defined.

(F) For purposes of this title, an individual whose trial work period has ended by application of paragraph (4)(D)(i) shall, subject to section 1611(e)(4), nonetheless be considered (except for purposes of section 1631(a)(5)) to be disabled through the end of the month preceding the termination month. For purposes of the preceding sentence, the termination month for any individual shall be the earlier of (i) the earliest month after the end of such period of trial work with respect to which such individual is determined to no longer be suffering from a disabling physical or mental impairment, or (ii) the first month, after the period of 15 consecutive months following the end of such period of trial work, in which such individual engages in or is determined to be able to engage in substantial gainful activity.

(4)(A) For purposes of this title, any services rendered during a period of trial work (as defined in subparagraph (B)) by an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection) shall be deemed not to have been rendered by such individual in determining whether his disability has ceased in a month during such period. As used in this paragraph, the term "services" means activity which is performed for remuneration or gain or is determined by the Secretary to be of a type normally performed for remuneration or gain.

(B) The term "period of trial work", with respect to an individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under paragraph (3) of this subsection), means a period of months beginning and ending as provided in subparagraphs (C) and (D).

(C) A period of trial work for any individual shall begin with the month in which he becomes eligible for benefits under this title on the basis of his disability; but no such period may begin for an individual who is eligible for benefits under this title on the basis of a disability if he has had a previous period of trial work while eligible for benefits on the basis of the same disability.

(D) A period of trial work for any individual shall end with the close of whichever of the following months is the earlier:

(i) the ninth month, beginning on or after the first day of such period, in which the individual renders services (whether or not such nine months are consecutive); or

(ii) the month in which his disability (as determined under paragraph (3) of this subsection) ceases (as determined after the application of subparagraph (A) of this paragraph).

Eligible Spouse

(b) For purposes of this title, the term "eligible spouse" means an aged, blind, or disabled individual who is the husband or wife of another aged, blind, or disabled individual and who has not been living apart from such other aged, blind, or disabled individual for more than six months. If two aged, blind, or disabled individuals are husband and wife as described in the preceding sentence, only one of them may be an "eligible individual" within the meaning of section 1611(a).

Definition of Child

(c) For purposes of this title, the term "child" means an individual who is neither married nor (as determined by the Secretary) the head of a household, and who is (1) under the age of eighteen, or (2) under the age of twenty-two and (as determined by the Secretary) a student regularly attending a school, college, or university, or a course of vocational or technical training designed to prepare him for gainful employment.

Determination of Marital Relationships

(d) In determining whether two individuals are husband and wife for purposes of this title, appropriate State law shall be applied; except that—

(1) if a man and women[1] have been determined to be husband and wife under section 216(h)(1) for purposes of title II they shall be considered (from and after the date of such determination or the date of their application for benefits under this title, whichever is later) to be husband and wife for purposes of this title, or

(2) if a man and woman are found to be holding themselves out to the community in which they reside as husband and wife, they shall be so considered for purposes of this title notwithstanding any other provision of this section.

United States

(e) For purposes of this title, the term "United States", when used in a geographical sense, means the 50 States and the District of Columbia.

Income and Resources of Individuals Other Than Eligible Individuals and Eligible Spouses

(f)(1) For purposes of determining eligibility for and the amount of benefits for any individual who is married and whose spouse is living with him in the same household but is not an eligible spouse, such individual's income and resources shall be deemed to include any income and resources of such spouse, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(2) For purposes of determining eligibility for and the amount of benefits for any individual who is a child under age 18, such individual's income and resources shall be deemed to include any income and resources of a parent of such individual (or the spouse of

[1] As in original. Should be "woman".

such a parent) who is living in the same household as such individual, whether or not available to such individual, except to the extent determined by the Secretary to be inequitable under the circumstances.

(3) For purposes of determining eligibility for and the amount of benefits for any individual who is an alien, such individual's income and resources shall be deemed to include the income and resources of his sponsor and such sponsor's spouse (if such alien has a sponsor) as provided in section 1621. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

REHABILITATION SERVICES FOR BLIND AND DISABLED INDIVIDUALS[1]

SEC. 1615. [42 U.S.C. 1382d] (a) In the case of any blind or disabled individual who—

(1) has not attained age 65, and

(2) is receiving benefits (or with respect to whom benefits are paid) under this title,

the Secretary shall make provision for referral of such individual to the appropriate State agency administering the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act[2], or, in the case of any such individual who has not attained age 16, to the State agency administering the State program under title V, and (except for individuals who have not attained age 16 and except in such other cases[3] as he may determine) for a review not less often than quarterly of such individual's blindness or disability and his need for and utilization of the services made available to him under such plan.

[(b) Repealed.[4]]

(c) Every individual age 16 or over with respect to whom the Secretary is required to make provision for referral under subsection (a) shall accept such services as are made available to him under the State plan for vocational and rehabilitation services approved under the Vocational Rehabilitation Act[5]; and no such individual shall be an eligible individual or eligible spouse for purposes of this title if he refuses without good cause to accept services for which he is referred under subsection (a).

(d) The Secretary is authorized to reimburse[6] the State agency administering or supervising the administration of a State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act[7] for[8] the costs incurred under such plan in the

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[1]With respect to references to the Vocational Rehabilitation Act, see, instead, Rehabilitation Act of 1973 (P.L. 93-112). The Vocational Rehabilitation Act (P.L. 78-113; approved July 6, 1943; 57 Stat. 374) was repealed by P.L. 93-112, §500(a).

[2]P.L. 78-113.

[3]P.L. 97-35, §2193(c)(8)(A), struck out "appropriate State agency administering the State plan under subsection (b) of this section, and (except in such cases" and substituted "State agency administering the State program under title V, and (except for individuals who have not attained age 16 and except in such other cases". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[4]P.L. 97-35, §2193(c)(8)(B), repealed subsection (b). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[5]P.L. 78-113.

[6]P.L. 97-35, §2344(1), struck out "pay to" and substituted "reimburse", effective October 1, 1981.

[7]P.L. 78-113.

[8]P.L. 97-35, §2344(2), inserted "for", effective October 1, 1981.

provision of rehabilitation services to individuals who are referred for such services pursuant to subsection (a) if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1)[1].

[(e) Repealed.[2]]

OPTIONAL STATE SUPPLEMENTATION

SEC. 1616. [42 U.S.C. 1382e] (a) Any cash payments which are made by a State (or political subdivision thereof) on a regular basis to individuals who are receiving benefits under this title or who would but for their income be eligible to receive benefits under this title, as assistance based on need in supplementation of such benefits (as determined by the Secretary), shall be excluded under section 1612(b)(6) in determining the income of such individuals for purposes of this title and the Secretary and such State may enter into an agreement which satisfies subsection (b) under which the Secretary will, on behalf of such State (or subdivision) make such supplementary payments to all such individuals.

(b) Any agreement between the Secretary and a State entered into under subsection (a) shall provide—

(1) that such payments will be made (subject to subsection (c)) to all individuals residing in such State (or subdivision) who are receiving benefits under this title, and

(2) such other rules with respect to eligibility for or amount of the supplementary payments, and such procedural or other general administrative provisions, as the Secretary finds necessary (subject to subsection (c)) to achieve efficient and effective administration of both the program which he conducts under this title and the optional State supplementation.

(c)(1) Any State (or political subdivision) making supplementary payments described in subsection (a) may at its option impose as a condition of eligibility for such payments, and include in the State's agreement with the Secretary under such subsection, a residence requirement which excludes individuals who have resided in the State (or political subdivision) for less than a minimum period prior to application for such payments.

(2) Any State (or political subdivision), in determining the eligibility of any individual for supplementary payments described in subsection (a), may disregard amounts of earned and unearned income in addition to other amounts which it is required or permitted to disregard under this section in determining such eligibility, and shall include a provision specifying the amount of any such income that will be disregarded, if any.[3]

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[1] P.L. 97-35, §2344(3), struck out "referred for such services pursuant to subsection (a)" and substituted "who are referred for such services pursuant to subsection (a) if such services result in their performance of substantial gainful activity which lasts for a continuous period of nine months. The determination of the amount of costs to be reimbursed under this subsection shall be made by the Commissioner of Social Security in accordance with criteria determined by him in the same manner as under section 222(d)(1)", effective October 1, 1981.

[2] P.L. 97-35, §2193(a)(4)(A), amended this subsection. For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

P.L. 97-35, §2193(c)(8)(B), repealed subsection (e). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[3] P.L. 96-265, §201(b)(1), added paragraph (3), effective January 1, 1981, but in effect only for a period of three years after that date.

See P.L. 96-265, "Social Security Disability Amendments of 1980", §201(e), with respect to the maintenance of separate accounts.

(d) Any State which has entered into an agreement with the Secretary under this section which provides that the Secretary will, on behalf of the State (or political subdivision), make the supplementary payments to individuals who are receiving benefits under this title (or who would but for their income be eligible to receive such benefits), shall, at such times and in such installments as may be agreed upon between the Secretary and such State, pay to the Secretary an amount equal to the expenditures made by the Secretary as such supplementary payments.[2]

(e)(1) Each State shall establish or designate one or more State or local authorities which shall establish, maintain, and insure the enforcement of standards for any category of institutions, foster homes, or group living arrangements in which (as determined by the State) a significant number of recipients of supplemental security income benefits is residing or is likely to reside. Such standards shall be appropriate to the needs of such recipients and the character of the facilities involved, and shall govern such matters as admission policies, safety, sanitation, and protection of civil rights.

(2) Each State shall annually make available for public review[3] a summary of the standards established pursuant to paragraph (1), and shall make available to any interested individual a copy of such standards, along with the procedures available in the State to insure the enforcement of such standards and a list of any waivers of such standards and any violations of such standards which have come to the attention of the authority responsible for their enforcement.

(3) Each State shall certify annually to the Secretary that it is in compliance with the requirements of this subsection.

(4) Payments made under this title with respect to an individual shall be reduced by an amount equal to the amount of any supplementary payment (as described in subsection (a)) or other payment made by a State (or political subdivision thereof) which is made for or on account of any medical or any other type of remedial care provided by an institution of the type described in paragraph (1) to such individual as a resident or an inpatient of such institution if such institution is not approved as meeting the standards described in such paragraph by the appropriate State or local authorities.

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[2]See P.L. 92-603, "Social Security Amendments of 1972", §401(d), with respect to phaseout of the hold harmless provision.

[3]P.L. 97-35, §2353(n), struck out ", as a part of the services program planning procedures established pursuant to section 2004 of this Act,", effective October 1, 1981.

COST-OF-LIVING ADJUSTMENTS IN BENEFITS[1]

SEC. 1617. [42 U.S.C. 1382f] (a) Whenever benefit amounts under title II are increased by any percentage effective with any month as a result of a determination made under section 215(i)—

(1) each of the dollar amounts in effect for such month under subsections (a)(1)(A), (a)(2)(A), (b)(1), and (b)(2) of section 1611, and subsection (a)(1)(A) of section 211 of Public Law 93-66, as specified in such subsections or as previously increased under this section, shall be increased by the amount (if any) by which—

(A) the amount which would have been in effect for such month under such subsection but for the rounding of such amount pursuant to paragraph (2), exceeds

(B) the amount in effect for such month under such subsection; and

(2) the amount obtained under paragraph (1) with respect to each subsection shall be further increased by the same percentage by which benefit amounts under title II are increased for such month, or, if greater (in any case where the increase under title II was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under title II would be increased for such month if the increase had been determined on the basis of the CPI increase percentage,[2] (and rounded, when not a multiple of $12, to the next lower multiple of $12), effective with respect to benefits for months after such month.

(b) The new dollar amounts to be in effect under section 1611 of this title and under section 211 of Public Law 93-66 by reason of subsection (a) of[3] this section shall be published in the Federal Register together with, and at the same time as, the material required by section 215(i)(2)(D) to be published therein by reason of the determination involved.

(c) Effective July 1, 1983—

(1) each of the dollar amounts in effect under subsections (a)(1)(A) and (b)(1) of section 1611, as previously increased under this section, shall be increased by $240 (and the dollar amount in effect under subsection (a)(1)(A) of section 211 of Public Law 93-66, as previously so increased, shall be increased by $120); and

(2) each of the dollar amounts in effect under subsections (a)(2)(A) and (b)(2) of section 1611, as previously increased under this section, shall be increased by $360.[4]

OPERATION OF STATE SUPPLEMENTATION PROGRAMS

SEC. 1618. [42 U.S.C. 1382g] (a) In order for any State which makes supplementary payments of the type described in section 1616(a) (including payments pursuant to an agreement entered into under section 212(a) of Public Law 93-66), on or after June 30, 1977, to be eligible for payments pursuant to title XIX with respect to expenditures for any calendar quarter which begins—

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[1] P.L. 97-248, §182(a), amended §1617 in its entirety, effective October 1, 1982.

[2] P.L. 98-21, §401(b), inserted ", or, if greater (in any case where the increase under title II was determined on the basis of the wage increase percentage rather than the CPI increase percentage), the percentage by which benefit amounts under title II would be increased for such month if the increase had been determined on the basis of the CPI increase percentage,", effective April 20, 1983.

[3] P.L. 98-21, §401(a)(2), inserted "subsection (a) of", effective April 20, 1983.

[4] P.L. 98-21, §401(a)(1), added subsection (c), effective April 20, 1983.

(1) after June 30, 1977, or, if later,

(2) after the calendar quarter in which it first makes such supplementary payments,

such State must have in effect an agreement with the Secretary whereby the State will—

(3) continue to make such supplementary payments, and

(4) maintain such supplementary payments at levels which are not lower than the levels of such payments in effect in December 1976, or, if no such payments were made in that month, the levels for the first subsequent month in which such payments were made.

(b) The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) with respect to the levels of its supplementary payments for a particular month or months if the State's expenditures for such payments in the twelve-month period (within which such month or months fall) beginning on the effective date of any increase in the level of supplemental security income benefits pursuant to section 1617 are not less than its expenditures for such payments in the preceding twelve-month period.

(c) Any State which satisfies the requirements of this section solely by reason of subsection (b) for a particular month or months in any 12-month period (described in such subsection) ending on or after June 30, 1982, may elect, with respect to any month in any subsequent 12-month period (so described), to apply subsection (a)(4) as though the reference to December 1976 in such subsection were a reference to the month of December which occurred in the 12-month period immediately preceding such subsequent period.[1]

(d)[2] The Secretary shall not find that a State has failed to meet the requirements imposed by paragraph (4) of subsection (a) with respect to the levels of its,[3] supplementary payments for any portion of the period July 1, 1980 through June 30, 1981, if the State's expenditures for such payments in that twelve-month period were not less than its expenditures for such payments for the period July 1, 1976 through June 30, 1977 (or, if the State made no supplementary payments in the period July 1, 1976 through June 30, 1977, the expenditures for the first twelve-month period extending from July 1 through June 30 in which the State made such payments).[4]

(e)(1) For any particular month after March 1983, a State which is not treated as meeting the requirements imposed by paragraph (4) of subsection (a) by reason of subsection (b) shall be treated as meeting such requirements if and only if—

(A) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1611(b) of this Act and section 211(a)(1)(A) of Public Law 93-66, for that particular month,

is not less than—

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[1] P.L. 97-248, §186, added this subsection (c), effective September 3, 1982.
[2] P.L. 98-21, §402, redesignated this subsection (c) as subsection (d), effective April 20, 1983.
[3] As in original. Comma should be stricken.
[4] P.L. 97-377, §147, added this subsection, effective December 21, 1982.

(B) the combined level of its supplementary payments (to recipients of the type involved) and the amounts payable (to or on behalf of such recipients) under section 1611(b) of this Act and section 211(a)(1)(A) of Public Law 93-66, for March 1983, increased by the amount of all cost-of-living adjustments under section 1617 (and any other benefit increases under this title) which have occurred after March 1983 and before that particular month.

(2) In determining the amount of any increase in the combined level involved under paragraph (1)(B) of this subsection, any portion of such amount which would otherwise be attributable to the increase under section 1617(c) shall be deemed instead to be equal to the amount of the cost-of-living adjustment which would have occurred in July 1983 (without regard to the 3-percent limitation contained in section 215(i)(1)(B)) if section 111 of the Social Security Amendments of 1983[1] had not been enacted.[2]

[SEC. 1619. Expired.[3]]

MEDICAL AND SOCIAL SERVICES FOR CERTAIN HANDICAPPED PERSONS

SEC. 1620. [42 U.S.C. 1382i] (a) There are authorized to be appropriated such sums as may be necessary to establish and carry out a 3-year Federal-State pilot program to provide medical and social services for certain handicapped individuals in accordance with this section.

(b)(1) The total sum of $18,000,000 shall be allotted to the States for such program by the Secretary, during the period beginning September 1, 1981, and ending September 30, 1984, as follows:

(A) The total sum of $6,000,000 shall be allotted to the States for the fiscal year ending September 30, 1982 (which for purposes of this section shall include the month of September 1981).

(B) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotment made under subparagraph (A), shall be allotted to the States for the fiscal year ending September 30, 1983.

(C) The total sum of $6,000,000, plus any amount remaining available (after the application of paragraph (4)) from the allotments made under subparagraphs (A) and (B), shall be allotted to the States for the fiscal year ending September 30, 1984.

(2) The allotment to each State from the total sum allotted under paragraph (1) for any fiscal year shall bear the same ratio to such total sum as the number of individuals in such State who are over age 17 and under age 65 and are receiving supplemental security income benefits as disabled individuals in such year (as determined by the Secretary on the basis of the most recent data available) bears to the total number of such individuals in all the States. For purposes of the preceding sentence, the term "supplemental security income benefits" includes payments made pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93-66.

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[1] April 20, 1983 [P.L. 98-21, 97 Stat. 65].

[2] P.L. 98-21, §402, added subsection (e), effective April 20, 1983.

[3] P.L. 96-265, §201(a), added §1619, effective January 1, 1981, but in effect only for a period of three years after that date; 94 Stat. 445, 449.

P.L. 97-35, §2353(o)(1) and (o)(2), amended §1619.

(3) At the beginning of each fiscal year in which the pilot program under this section is in effect, each State that does not intend to use the allotment to which it is entitled for such year (or any allotment which was made to it for a prior fiscal year), or that does not intend to use the full amount of any such allotment, shall certify to the Secretary the amount of such allotment which it does not intend to use, and the State's allotment for the fiscal year (or years) involved shall thereupon be reduced by the amount so certified.

(4) The portion of the total amount available for allotment for any particular fiscal year under paragraph (1) which is not allotted to States for that year by reason of paragraph (3) (plus the amount of any reductions made at the beginning of such year in the allotments of States for prior fiscal years under paragraph (3)) shall be reallocated in such manner as the Secretary may determine to be appropriate to States which need, and will use, additional assistance in providing services to severely handicapped individuals in that particular year under their approved plans. Any amount reallocated to a State under this paragraph for use in a particular fiscal year shall be treated for purposes of this section as increasing such State's allotment for that year by an equivalent amount.

(c) In order to participate in the pilot program and be eligible to receive payments for any period under subsection (d), a State (during such period) must have a plan, approved by the Secretary as meeting the requirements of this section, which provides medical and social services for severely handicapped individuals whose earnings are above the level which ordinarily demonstrates an ability to engage in substantial gainful activity and who are not receiving benefits under section 1611 or 1619 or assistance under a State plan approved under section 1902, and which—

(1) declares the intent of the State to participate in the pilot program;

(2) designates an appropriate State agency to administer or supervise the administration of the program in the State;

(3) describes the criteria to be applied by the State in determining the eligibility of any individual for assistance under the plan and in any event requires a determination by the State agency to the effect that (A) such individual's ability to continue his employment would be significantly inhibited without such assistance and (B) such individual's earnings are not sufficient to allow him to provide for himself a reasonable equivalent of the cash and other benefits that would be available to him under this title and titles XIX and XX in the absence of those earnings;

(4) describes the process by which the eligibility of individuals for such assistance is to be determined (and such process may not involve the performance of functions by any State agency or entity which is engaged in making determinations of disability for purposes of disability insurance or supplemental security income benefits except when the use of a different agency or entity to perform those functions would not be feasible);

(5) describes the medical and social services to be provided under the plan;

(6) describes the manner in which the medical and social services involved are to be provided and, if they are not to be provided through the State's medical assistance and social serv-

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ices programs under titles XIX and XX (with the Federal payments being made under subsection (d) of this section rather than under those titles), specifies the particular mechanisms and procedures to be used in providing such services; and

(7) contains such other provisions as the Secretary may find to be necessary or appropriate to meet the requirements of this section or otherwise carry out its purpose.[1]

(d)(1) From its allotment under subsection (b) for any fiscal year (and any amounts remaining available from allotments made to it for prior fiscal years), the Secretary shall from time to time pay to each State which has a plan approved under subsection (c) an amount equal to 75 per centum of the total sum expended under such plan (including the cost of administration of such plan) in providing medical and social services to severely handicapped individuals who are eligible for such services under the plan.

(2) The method of computing and making payments under this section shall be as follows:

(A) The Secretary shall, prior to each period for which a payment is to be made to a State, estimate the amount to be paid to the State for such period under the provisions of this section.

(B) From the allotment available therefor, the Secretary shall pay the amount so estimated, reduced or increased, as the case may be, by any sum (not previously adjusted under this subsection) by which he finds that his estimate of the amount to be paid the State for any prior period under this section was greater or less than the amount which should have been paid to the State for such period under this section.

(e) Within nine months after the date of the enactment of this section[2], the Secretary shall prescribe and publish such regulations as may be necessary or appropriate to carry out the pilot program and otherwise implement this section.

(f) Each State participating in the pilot program under this section shall from time to time report to the Secretary on the operation and results of such program in that State, with particular emphasis upon the work incentive effects of the program. On or before October 1, 1983, the Secretary shall submit to the Congress a report on the program, incorporating the information contained in the State reports along with his findings and recommendations.

ATTRIBUTION OF SPONSOR'S INCOME AND RESOURCES TO ALIENS

SEC. 1621. [42 U.S.C. 1382j] (a) For purposes of determining eligibility for and the amount of benefits under this title for an individual who is an alien, the income and resources of any person who (as a sponsor of such individual's entry into the United States) executed an affidavit of support or similar agreement with respect to such individual, and the income and resources of the sponsor's spouse, shall be deemed to be the income and resources of such individual (in accordance with subsections (b) and (c)) for a period of three years after the individual's entry into the United States. Any such income deemed to be income of such individual shall be treated as unearned income of such individual.

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[1] P.L. 97-35, §2353(p), struck out the last sentence of subsection (c) which read: "The plan under this section may be developed and submitted as a separate State plan, or may be submitted in the form of an amendment to the State's plan under section 2003(d)(1).", effective October 1, 1981.

[2] June 9,1980 is date of enactment (P.L. 96-265, 94 Stat. 446, 448).

(b)(1) The amount of income of a sponsor (and his spouse) which shall be deemed to be the unearned income of an alien for any year shall be determined as follows:

(A) The total yearly rate of earned and unearned income (as determined under section 1612(a)) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined for such year.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) the maximum amount of the Federal benefit under this title for such year which would be payable to an eligible individual who has no other income and who does not have an eligible spouse (as determined under section 1611(b)(1)), plus (ii) one-half of the amount determined under clause (i) multiplied by the number of individuals who are dependents of such sponsor (or such sponsor's spouse if such spouse is living with the sponsor), other than such alien and such alien's spouse.

(C) The amount of income which shall be deemed to be unearned income of such alien shall be at a yearly rate equal to the amount determined under subparagraph (B). The period for determination of such amount shall be the same as the period for determination of benefits under section 1611(c).

(2) The amount of resources of a sponsor (and his spouse) which shall be deemed to be the resources of an alien for any year shall be determined as follows:

(A) The total amount of the resources (as determined under section 1613) of such sponsor and such sponsor's spouse (if such spouse is living with the sponsor) shall be determined.

(B) The amount determined under subparagraph (A) shall be reduced by an amount equal to (i) $1,500 in the case of a sponsor who has no spouse with whom he is living, or (ii) $2,250 in the case of a sponsor who has a spouse with whom he is living.

(C) The resources of such sponsor (and spouse) as determined under subparagraphs (A) and (B) shall be deemed to be resources of such alien in addition to any resources of such alien.

(c) In determining the amount of income of an alien during the period of three years after such alien's entry into the United States, the reduction in dollar amounts otherwise required under section 1612(a)(2)(A)(i) shall not be applicable if such alien is living in the household of a person who is a sponsor (or such sponsor's spouse) of such alien, and is receiving support and maintenance in kind from such sponsor (or spouse), nor shall support or maintenance furnished in cash or kind to an alien by such alien's sponsor (to the extent that it reflects income or resources which were taken into account in determining the amount of income and resources to be deemed to the alien under subsection (a) or (b)) be considered to be income of such alien under section 1612(a)(2)(A).

(d)(1) Any individual who is an alien shall, during the period of three years after entry into the United States, in order to be an eligible individual or eligible spouse for purposes of this title, be required to provide to the Secretary such information and documentation with respect to his sponsor as may be necessary in order for the Secretary to make any determination required under this section, and to obtain any cooperation from such sponsor necessary for

any such determination. Such alien shall also be required to provide to the Secretary such information and documentation as the Secretary may request and which such alien or his sponsor provided in support of such alien's immigration application.

(2) The Secretary shall enter into agreements with the Secretary of State and the Attorney General whereby any information available to such persons and required in order to make any determination under this section will be provided by such persons to the Secretary, and whereby such persons shall inform any sponsor of an alien, at the time such sponsor executes an affidavit of support or similar agreement, of the requirements imposed by this section.

(e) Any sponsor of an alien, and such alien, shall be jointly and severably[1] liable for an amount equal to any overpayment made to such alien during the period of three years after such alien's entry into the United States, on account of such sponsor's failure to provide correct information under the provisions of this section, except where such sponsor was without fault, or where good cause for such failure existed. Any such overpayment which is not repaid to the Secretary or recovered in accordance with section 1631(b) shall be withheld from any subsequent payment to which such alien or such sponsor is entitled under any provision of this Act.

(f)(1) The provisions of this section shall not apply with respect to any individual who is an "aged, blind, or disabled individual" for purposes of this title by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), from and after the onset of the impairment, if such blindness or disability commenced after the date of such individual's admission into the United States for permanent residence.

(2) The provisions of this section shall not apply with respect to any alien who is—

(A) admitted to the United States as a result of the application, prior to April 1, 1980, of the provisions of section 203(a)(7) of the Immigration and Nationality Act[2];

(B) admitted to the United States as a result of the application, after March 31, 1980, of the provisions of section 207(c)(1) of such Act[3];

(C) paroled into the United States as a refugee under section 212(d)(5) of such Act[4]; or

(D) granted political asylum by the Attorney General.

[SEC. 1622. Repealed.[5]]

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[1]As in original. Should be "severally".

[2]P.L. 82-414.

[3]P.L. 82-414.

[4]P.L. 82-414.

[5]P.L. 97-35, §2201(g), added §1622, effective as described in P.L. 97-35, §2201(h).

P.L. 97-123, §2(j)(1), repealed that effective date, effective September 1, 1981. For the new effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

P.L. 97-123, §2(h), [95 Stat. 1661], repealed §1622. For the effective date, see P.L. 97-123, [Amendments to P.L. 97-35], §2(j)(2)-(j)(4), p. 787.

PART B—PROCEDURAL AND GENERAL PROVISIONS

PAYMENTS AND PROCEDURES[1]

Payment of Benefits

SEC. 1631. [42 U.S.C. 1383] (a)(1) Benefits under this title shall be paid at such time or times and in such installments as will best effectuate the purposes of this title, as determined under regulations (and may in any case be paid less frequently than monthly where the amount of the monthly benefit would not exceed $10).

(2) Payments of the benefit of any individual may be made to any such individual or to his eligible spouse (if any) or partly to each, or, if the Secretary deems it appropriate to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse). Notwithstanding the provisions of the preceding sentence, in the case of any individual or eligible spouse referred to in section 1611(e)(3)(A), the Secretary shall provide for making payments of the benefit to any other person (including an appropriate public or private agency) who is interested in or concerned with the welfare of such individual (or spouse).[2]

(3) The Secretary may by regulation establish ranges of incomes within which a single amount of benefits under this title shall apply.

(4) The Secretary—

(A) may make to any individual initially applying for benefits under this title who is presumptively eligible for such benefits and who is faced with financial emergency a cash advance against such benefits in an amount not exceeding $100; and

(B) may pay benefits under this title to an individual applying for such benefits on the basis of disability or blindness for a period not exceeding 3 months prior to the determination of such individual's disability or blindness, if such individual is presumptively disabled or blind and is determined to be otherwise eligible for such benefits, and any benefits so paid prior to such determination shall in no event be considered overpayments for purposes of subsection (b) solely because such individual is determined not to be disabled or blind.[3]

(5) Payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of blindness (as determined under section 1614(a)(2)) or disability (as determined under section 1614(a)(3)), and who ceases to be blind or to be under such disability, shall continue (so long as such individual is otherwise eligible) through the second month following the month in which such blindness or disability ceases.

(6) Notwithstanding any other provision of this title, payment of the benefit of any individual who is an aged, blind, or disabled individual solely by reason of disability (as determined under section 1614(a)(3)) shall not be terminated or suspended because the physical or mental impairment, on which the individual's eligibility for such benefit is based, has or may have ceased, if—

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[1]See P.L. 90-321, "Consumer Credit Protection Act", §913(2), with respect to electronic fund transfers.

[2]See P.L. 95-608, "Indian Child Welfare Act of 1978", §201(b), with respect to Indian children.

[3]See P.L. 93-256, [Social Security—Disability Benefits—Increase], §1, with respect to certain presumptively disabled individuals.

(A) such individual is participating in an approved vocational rehabilitation program under a State plan approved under title I of the Rehabilitation Act of 1973[1], and

(B) the Commissioner of Social Security determines that the completion of such program, or its continuation for a specified period of time, will increase the likelihood that such individual may (following his participation in such program) be permanently removed from the disability benefit rolls.

Overpayments and Underpayments

(b)(1) Whenever the Secretary finds that more or less than the correct amount of benefits has been paid with respect to any individual, proper adjustment or recovery shall, subject to the succeeding provisions of this subsection, be made by appropriate adjustments in future payments to such individual or by recovery from or payment to such individual or his eligible spouse (or by recovery from the estate of either). The Secretary shall make such provision as he finds appropriate in the case of payment of more than the correct amount of benefits with respect to an individual with a view to avoiding penalizing such individual or his eligible spouse who was without fault in connection with the overpayment, if adjustment or recovery on account of such overpayment in such case would defeat the purposes of this title, or be against equity or[2] good conscience, or (because of the small amount involved) impede efficient or effective administration of this title.

(2) In any case in which advance payments for a taxable year made by all employers to an individual under section 3507 of the Internal Revenue Code of 1954[3] (relating to advance payment of earned income credit) exceed the amount of such individual's earned income credit allowable under section 43 of such Code[4] for such year, so that such individual is liable under section 43(g) of such Code[5] for a tax equal to such excess, the Secretary shall provide for an appropriate adjustment of such individual's benefit amount under this title so as to provide payment to such individual of an amount equal to the amount of such benefits lost by such individual on account of such excess advance payments.

(3) For payments for which adjustments are made by reason of a retroactive payment of benefits under title II, see section 1127.[6]

Hearings and Review

(c)(1) The Secretary is directed to make findings of fact, and decisions as to the rights of any individual applying for payment under this title. Any such decision by the Secretary which involves a determination of disability and which is in whole or in part unfavorable to such individual shall contain a statement of the case, in understandable language, setting forth a discussion of the evidence,

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[1] P.L. 93-112.
[2] As in original. Customary term is "against equity and good conscience".
[3] See P.L. 83-591, "Internal Revenue Code of 1954", §3507, p. 887.
[4] P.L. 83-591.
[5] P.L. 83-591.
[6] P.L. 96-265, §501(c)(2), added this paragraph, effective in the case of payments of monthly insurance benefits under title II of the Act entitlement for which is determined on or after July 1, 1981.

and stating the Secretary's determination and the reason or reasons upon which it is based.[1] The Secretary shall provide reasonable notice and opportunity for a hearing to any individual who is or claims to be an eligible individual or eligible spouse and is in disagreement with any determination under this title with respect to eligibility of such individual for benefits, or the amount of such individual's benefits, if such individual requests a hearing on the matter in disagreement within sixty days after notice of such determination is received, and, if a hearing is held, shall, on the basis of evidence adduced at the hearing affirm, modify, or reverse his findings of fact and such decision. The Secretary is further authorized, on his own motion, to hold such hearings and to conduct such investigations and other proceedings as he may deem necessary or proper for the administration of this title. In the course of any hearing, investigation, or other proceeding, he may administer oaths and affirmations, examine witnesses, and receive evidence. Evidence may be received at any hearing before the Secretary even though inadmissible under the rules of evidence applicable to court procedure.

(2) Determination on the basis of such hearing, except to the extent that the matter in disagreement involves a disability (within the meaning of section 1614(a)(3)), shall be made within ninety days after the individual requests the hearing as provided in paragraph (1).

(3) The final determination of the Secretary after a hearing under paragraph (1) shall be subject to judicial review as provided in section 205(g) to the same extent as the Secretary's final determinations under section 205.

Procedures; Prohibitions of Assignments; Representation of Claimants

(d)(1) The provisions of section 207 and subsections (a), (d), (e), and (f)[2] of section 205 shall apply with respect to this part to the same extent as they apply in the case of title II.

(2) The Secretary may prescribe rules and regulations governing the recognition of agents or other persons, other than attorneys, as hereinafter provided, representing claimants before the Secretary under this title, and may require of such agents or other persons, before being recognized as representatives of claimants, that they shall show that they are of good character and in good repute, possessed of the necessary qualifications to enable them to render such claimants valuable service, and otherwise competent to advise and assist such claimants in the presentation of their cases. An attorney in good standing who is admitted to practice before the highest court of the State, Territory, District, or insular possession of his residence or before the Supreme Court of the United States or the inferior Federal courts, shall be entitled to represent claimants before the Secretary. The Secretary may, after due notice and opportunity for hearing, suspend or prohibit from further practice before him any such person, agent, or attorney who refuses to comply with the Secretary's rules and regulations or who violates any

[1] P.L. 96-265, §305(b), added the preceding sentence, effective with respect to decisions made on or after July 1, 1981.

[2] As in original. P.L. 91-452, §236, repealed §205(f), effective December 14, 1970.

provision of this paragraph for which a penalty is prescribed. The Secretary may, by rule and regulation, prescribe the maximum fees which may be charged for services performed in connection with any claim before the Secretary under this title, and any agreement in violation of such rules and regulations shall be void. Any person who shall, with intent to defraud, in any manner willfully and knowingly deceive, mislead, or threaten any claimant or prospective claimant or beneficiary under this title by word, circular, letter, or advertisement, or who shall knowingly charge or collect directly or indirectly any fee in excess of the maximum fee, or make any agreement directly or indirectly to charge or collect any fee in excess of the maximum fee, prescribed by the Secretary, shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall for each offense be punished by a fine not exceeding $500 or by imprisonment not exceeding one year, or both.

Applications and Furnishing of Information[1]

(e)(1)(A) The Secretary shall, subject to subparagraph (B), prescribe such requirements with respect to the filing of applications, the suspension or termination of assistance, the furnishing of other data and material, and the reporting of events and changes in circumstances, as may be necessary for the effective and efficient administration of this title.

(B) The requirements prescribed by the Secretary pursuant to subparagraph (A) shall require that eligibility for benefits under this title will not be determined solely on the basis of declarations by the applicant concerning eligibility factors or other relevant facts, and that relevant information will be verified from independent or collateral sources and additional information obtained as necessary in order to assure that such benefits are only provided to eligible individuals (or eligible spouses) and that the amounts of such benefits are correct.

(2) In case of the failure by any individual to submit a report of events and changes in circumstances relevant to eligibility for or amount of benefits under this title as required by the Secretary under paragraph (1), or delay by any individual in submitting a report as so required, the Secretary (in addition to taking any other action he may consider appropriate under paragraph (1)) shall reduce any benefits which may subsequently become payable to such individual under this title by—

(A) $25 in the case of the first such failure or delay,

(B) $50 in the case of the second such failure or delay, and

(C) $100 in the case of the third or a subsequent such failure or delay,

except where the individual was without fault or good cause for such failure or delay existed.

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[1]See P.L. 88-525, "Food Stamp Act of 1977", §11(i), with respect to inquiry into the need for food stamps.

See P.L. 95-630, "Financial Institutions Regulatory and Interest Rate Control Act of 1978", §§1101-1121, with respect to an individual's right to financial privacy.

Furnishing of Information by Other Agencies[1]

(f) The head of any Federal agency shall provide such information as the Secretary needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

REIMBURSEMENT TO STATES FOR INTERIM ASSISTANCE PAYMENTS[2]

(g)(1) Notwithstanding subsection (d)(1) and subsection (b) as it relates to the payment of less than the correct amount of benefits, the Secretary may, upon written authorization by an individual, withhold benefits due with respect to that individual and may pay to a State (or a political subdivision thereof if agreed to by the Secretary and the State) from the benefits withheld an amount sufficient to reimburse the State (or political subdivision) for interim assistance furnished on behalf of the individual by the State (or political subdivision).

(2) For purposes of this subsection, the term "benefits" with respect to any individual means supplemental security income benefits under this title, and any State supplementary payments under section 1616 or under section 212 of Public Law 93-66 which the Secretary makes on behalf of a State (or political subdivision thereof), that the Secretary has determined to be due with respect to the individual at the time the Secretary makes the first payment of benefits. A cash advance made pursuant to subsection (a)(4)(A) shall not be considered as the first payment of benefits for purposes of the preceding sentence.

(3) For purposes of this subsection, the term "interim assistance" with respect to any individual means assistance financed from State or local funds and furnished for meeting basic needs during the period, beginning with the month in which the individual filed an application for benefits (as defined in paragraph (2)), for which he was eligible for such benefits.

(4) In order for a State to receive reimbursement under the provisions of paragraph (1), the State shall have in effect an agreement with the Secretary which shall provide—

(A) that if the Secretary makes payment to the State (or a political subdivision of the State as provided for under the agreement) in reimbursement for interim assistance (as defined in paragraph (3)) for any individual in an amount greater than the reimbursable amount authorized by paragraph (1), the State (or political subdivision) shall pay to the individual the balance of such payment in excess of the reimbursable amount as expeditiously as possible, but in any event within ten working days or a shorter period specified in the agreement; and

(B) that the State will comply with such other rules as the Secretary finds necessary to achieve efficient and effective administration of this subsection and to carry out the purposes of the program established by this title, including protection of hearing rights for any individual aggrieved by action taken by the State (or political subdivision) pursuant to this subsection.

(5) The provisions of subsection (c) shall not be applicable to any disagreement concerning payment by the Secretary to a State pursuant to the preceding provisions of this subsection nor the amount retained by the State (or political subdivision).

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[1] See P.L. 95-630, "Financial Institutions Regulatory and Interest Rate Control Act of 1978", §§1101-1121, with respect to an individual's right to financial privacy.

[2] As in original. [P.L. 93-368, §5; 88 Stat. 420].

Payment of Certain Travel Expenses

(h) The Secretary shall pay travel expenses, either on an actual cost or commuted basis, to individuals for travel incident to medical examinations requested by the Secretary in connection with disability determinations under this title, and to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 1614(e)) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.

Payment to States With Respect to Certain Unnegotiated Checks[1]

(i)(1) The Secretary of the Treasury shall, on a monthly basis, notify the Secretary of all benefit checks issued under this title which include amounts representing State supplementary payments as described in paragraph (2) and which have not been presented for payment within one hundred and eighty days after the day on which they were issued.

(2) The Secretary shall from time to time determine the amount representing the total of the State supplementary payments made pursuant to agreements under section 1616(a) of this Act and under section 212(b) of Public Law 93-66 which is included in all such benefit checks[2] not presented for payment within one hundred and eighty days after the day on which they were issued, and shall pay each State (or credit each State with) an amount equal to that State's share of all such amount. Amounts not paid to the States shall be returned to the appropriation from which they were originally paid.

(3) The Secretary, upon notice from the Secretary of the Treasury under paragraph (1), shall notify any State having an agreement described in paragraph (2) of all such benefit checks issued under that State's agreement which were not presented for payment within one hundred and eighty days after the day on which they were issued.

(4) The Secretary shall, to the maximum extent feasible, investigate the whereabouts and eligibility of the individuals whose benefit checks were not presented for payment within one hundred and eighty days after the day on which they were issued.

PENALTIES FOR FRAUD[3]

SEC. 1632. [42 U.S.C. 1383a] Whoever—

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[1]P.L. 97-35, §2343(a), added subsection (i), effective October 1, 1982.

[2]P.L. 97-248, §187(a), struck out "checks payable to individuals entitled to benefits under this title but" and substituted "such benefit checks", effective October 1, 1982.

[3]See 18 U.S.C. 1028, 1738 with respect to penalties relating to use of identification documents.

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit, or (B) the initial or continued right to any such benefit of any other individual in whose behalf he has applied for or is receiving such benefit, conceals or fails to disclose such event with an intent fraudulently to secure such benefit either in a greater amount or quantity than is due or when no such benefit is authorized, or

(4) having made application to receive any such benefit for the use and benefit of another and having received it, knowingly and willfully converts such benefit or any part thereof to a use other than for the use and benefit of such other person,

shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

ADMINISTRATION

SEC. 1633. [42 U.S.C. 1383b] (a) Subject to subsection (b), the Secretary may make such administrative and other arrangements (including arrangements for the determination of blindness and disability under section 1614(a)(2) and (3) in the same manner and subject to the same conditions as provided with respect to disability determinations under section 221) as may be necessary or appropriate to carry out his functions under this title.

(b) In determining, for purposes of this title, whether an individual is blind, there shall be an examination of such individual by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select.

DETERMINATIONS OF MEDICAID ELIGIBILITY[1]

SEC. 1634. [42 U.S.C. 1383c] The Secretary may enter into an agreement with any State which wishes to do so under which he will determine eligibility for medical assistance in the case of aged, blind, or disabled individuals under such State's plan approved under title XIX. Any such agreement shall provide for payments by the State, for use by the Secretary in carrying out the agreement, of an amount equal to one-half of the cost of carrying out the agreement, but in computing such cost with respect to individuals eligible for benefits under this title, the Secretary shall include only those costs which are additional to the costs incurred in carrying out this title.

[1]See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §503, with respect to preservation of medicaid eligibility.

TITLE XVII—GRANTS FOR PLANNING COMPREHENSIVE ACTION TO COMBAT MENTAL RETARDATION[1]

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AUTHORIZATION OF APPROPRIATIONS

SECTION 1701. [42 U.S.C. 1391] For the purpose of assisting the States (including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa) to plan for and take other steps leading to comprehensive State and community action to combat mental retardation, there is authorized to be appropriated the sum of $2,200,000. There are also authorized to be appropriated, for assisting such States in initiating the implementation and carrying out of planning and other steps to combat mental retardation, $2,750,000 for the fiscal year ending June 30, 1966, and $2,750,000 for the fiscal year ending June 30, 1967.

GRANTS TO STATES

SEC. 1702. [42 U.S.C. 1392] The sums appropriated pursuant to the first sentence of section 1701 shall be available for grants to States by the Secretary during the fiscal year ending June 30, 1964, and the succeeding fiscal year; and the sums appropriated pursuant to the second sentence of such section for the fiscal year ending June 30, 1966, shall be available for such grants during such year and the next two fiscal years, and sums appropriated pursuant thereto for the fiscal year ending June 30, 1967, shall be available for such grants during such year and the succeeding fiscal year. Any such grant to a State, which shall not exceed 75 per centum of the cost of the planning and related activities involved, may be used by it to determine what action is needed to combat mental retardation in the

[1] Title XVII of the Social Security Act is administered by the Office of Human Development Services, Rehabilitation Services Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare).

Title XVII appears in the United States Code as §§1391-1394, subchapter XVII, chapter 7, Title 42.

No regulations have been promulgated for Title XVII.

Title XVII was added to the Social Security Act by P.L. 88-156, "Maternal and Child Health and Mental Retardation Planning Amendments of 1963", §5 (77 Stat. 273, 275), effective October 24, 1963; however, it now is inactive.

[2] This table of contents does not appear in the law.

State and the resources available for this purpose, to develop public awareness of the mental retardation problem and of the need for combating it, to coordinate State and local activities relating to the various aspects of mental retardation and its prevention, treatment, or amelioration, and to plan other activities leading to comprehensive State and community action to combat mental retardation.

APPLICATIONS

SEC. 1703. [42 U.S.C. 1393] In order to be eligible for a grant under section 1702, a State must submit an application therefor which—

(1) designates or establishes a single State agency, which may be an interdepartmental agency, as the sole agency for carrying out the purposes of this title;

(2) indicates the manner in which provision will be made to assure full consideration of all aspects of services essential to planning for comprehensive State and community action to combat mental retardation, including services in the fields of education, employment, rehabilitation, welfare, health, and the law, and services provided through community programs for and institutions for the mentally retarded;

(3) sets forth its plans for expenditure of such grant, which plans provide reasonable assurance of carrying out the purposes of this title;

(4) provides for submission of a final report of the activities of the State agency in carrying out the purposes of this title, and for submission of such other reports, in such form and containing such information, as the Secretary[1] may from time to time find necessary for carrying out the purposes of this title and for keeping such records and affording such access thereto as he may find necessary to assure the correctness and verification of such reports; and

(5) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this title.

PAYMENTS

SEC. 1704. [42 U.S.C. 1394] Payment of grants under this title may be made (after necessary adjustment on account of previously made underpayments or overpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary may determine.

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[1] P.L. 88-156, §6, provides that the term "Secretary" means the Secretary of Health, Education, and Welfare [now Secretary of Health and Human Services].

TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED[1]

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[1]Title XVIII of the Social Security Act is administered by the Health Care Financing Administration, Department of Health and Human Services (formerly Department of Health, Education, and Welfare).

Title XVIII appears in the United States Code as §§1395-1395xx, subchapter XVIII, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title XVIII are contained in chapter IV, Title 42, and in subtitle A, Title 45, Code of Federal Regulations.

See P.L. 78-410, "Public Health Service Act", §304(d)(4), with respect to study of cost of diseases and adverse effects on humans which are environmentally related.

See P.L. 78-410, "Public Health Service Act", §328(d), with respect to report to Congress by Comptroller General on hospital-affiliated primary care centers.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 89-73, "Older Americans Act of 1965", §§203 and 422(c) with respect to consultation.

See P.L. 95-250, [Redwood National Park], §201(19), with respect to trust fund contributions, and §204(b)(4), with respect to Title XVIII ineligibility.

See P.L. 96-265, "Social Security Disability Amendments of 1980", §505(a)(3), with respect to experiments, demonstration projects, and required reports to Congress.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §119, with respect to private sector review initiative and restriction against recovery from beneficiaries; §122(i), with respect to hospice demonstration projects and a report to Congress; §122(j), with respect to a study and report to Congress on reimbursement for hospice care; §125, with respect to special enrollment provisions for merchant seamen; and §135, with respect to six-month moratorium on deregulation of skilled nursing and intermediate care facilities.

See P.L. 98-21, "Social Security Amendments of 1983", §338, with respect to a study concerning the establishment of the Social Security Administration as an independent agency, and §603, with respect to a variety of studies and reports to Congress.

[2]This table of contents does not appear in the law.

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PROHIBITION AGAINST ANY FEDERAL INTERFERENCE

SEC. 1801. [42 U.S.C. 1395] Nothing in this title shall be construed to authorize any Federal officer or employee to exercise any supervision or control over the practice of medicine or the manner in which medical services are provided, or over the selection, tenure, or compensation of any officer or employee of any institution, agency, or person providing health services; or to exercise any supervision or control over the administration or operation of any such institution, agency, or person.

FREE CHOICE BY PATIENT GUARANTEED

SEC. 1802. [42 U.S.C. 1395a] Any individual entitled to insurance benefits under this title may obtain health services from any institution, agency, or person qualified to participate under this title if such institution, agency, or person undertakes to provide him such services.

OPTION TO INDIVIDUALS TO OBTAIN OTHER HEALTH INSURANCE PROTECTION

SEC. 1803. [42 U.S.C. 1395b] Nothing contained in this title shall be construed to preclude any State from providing, or any individual from purchasing or otherwise securing, protection against the cost of any health services.

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PART A—HOSPITAL INSURANCE BENEFITS FOR THE AGED AND DISABLED[1]

DESCRIPTION OF PROGRAM

SEC. 1811. [42 U.S.C. 1395c] The insurance program for which entitlement is established by sections 226 and 226A provides basic protection against the costs of hospital, related post-hospital, home health[2] services, and hospice care[3] in accordance with this part for (1) individuals who are age 65 or over and are eligible for retirement benefits under title II of this Act (or would be eligible for such benefits if certain Federal employment were covered employment under such title)[4] or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 months to benefits under title II of this Act (or would have been so entitled to such benefits if certain Federal employment were covered employment under such title)[5] or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

SCOPE OF BENEFITS

SEC. 1812. [42 U.S.C. 1395d] (a) The benefits provided to an individual by the insurance program under this part shall consist of entitlement to have payment made on his behalf or, in the case of payments referred to in section 1814(d)(2) to him (subject to the provisions of this part) for—

(1) inpatient hospital services for up to 150 days during any spell of illness minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2)(A)[6] post-hospital extended care services for up to 100 days during any spell of illness, and (B) to the extent provided in subsection (f), extended care services that are not post-hospital extended care services[7];

(3) home health services; and[8]

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[1] See 38 U.S.C. 5053, with respect to provision of hospital care or medical services by the Veterans' Administration.

See P.L. 96-605, "Miscellaneous Revenue Act of 1980", §401, with respect to certain social security tax waiver exemptions.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(d), with respect to deemed entitlement for hospital insurance benefits purposes.

[2] P.L. 96-499, §930(a), struck out "and related post-hospital" and substituted ", related post-hospital, and home health", effective with respect to services furnished on or after July 1, 1981.

[3] P.L. 97-248, §122(a)(1), struck out "and home health services" and substituted "home health services, and hospice care". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[4] P.L. 97-248, §278(b)(3)(A), inserted "(or would be eligible for such benefits if certain Federal employment were covered employment under such title)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[5] P.L. 97-248, §278(b)(3)(B), inserted "(or would have been so entitled to such benefits if certain Federal employment were covered employment under such title)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §278(c)(2), p. 793.

[6] P.L. 97-248, §123(a), inserted "(A)", effective September 3, 1982.

[7] P.L. 97-248, §123(a), added subparagraph (B), effective September 3, 1982.

[8] P.L. 96-499, §930(b), amended paragraph (3) in its entirety, effective with respect to services furnished on or after July 1, 1981.

(4) in lieu of certain other benefits, hospice care with respect to the individual during up to two periods of 90 days each and one subsequent period of 30 days with respect to which the individual makes an election under subsection (d)(1).[1]

(b) Payment under this part for services furnished an individual during a spell of illness may not (subject to subsection (c)) be made for—

(1) inpatient hospital services furnished to him during such spell after such services have been furnished to him for 150 days during such spell minus 1 day for each day of inpatient hospital services in excess of 90 received during any preceding spell of illness (if such individual was entitled to have payment for such services made under this part unless he specifies in accordance with regulations of the Secretary that he does not desire to have such payment made);

(2) post-hospital extended care services furnished to him during such spell after such services have been furnished to him for 100 days during such spell; or

(3) inpatient psychiatric hospital services furnished to him after such services have been furnished to him for a total of 190 days during his lifetime.

(c) If an individual is an inpatient of a psychiatric hospital on the first day of the first month for which he is entitled to benefits under this part, the days on which he was an inpatient of such a hospital in the 150-day period immediately before such first day shall be included in determining the number of days limit under subsection (b)(1) insofar as such limit applies to (1) inpatient psychiatric hospital services, or (2) inpatient hospital services for an individual who is an inpatient primarily for the diagnosis or treatment of mental illness (but shall not be included in determining such number of days limit insofar as it applies to other inpatient hospital services or in determining the 190-day limit under subsection (b)(3)).

(d)(1) Payment under this part may be made for hospice care provided with respect to an individual only during two periods of 90 days each and one subsequent period of 30 days during the individual's lifetime and only, with respect to each such period, if the individual makes an election under this paragraph to receive hospice care under this part provided by, or under arrangements made by, a particular hospice program instead of certain other benefits under this title.

(2)(A) Except as provided in subparagraphs (B) and (C) and except in such exceptional and unusual circumstances as the Secretary may provide, if an individual makes such an election for a period with respect to a particular hospice program, the individual shall be deemed to have waived all rights to have payment made under this title with respect to—

(i) hospice care provided by another hospice program (other than under arrangements made by the particular hospice program) during the period, and

(ii) services furnished during the period that are determined (in accordance with guidelines of the Secretary) to be—

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[1]P.L. 96-499, §931(a), added paragraph (4), effective April 1, 1981.

P.L. 97-35, §2121(a)(3), struck out the former paragraph (4), effective with respect to services furnished in detoxification facilities for inpatient stays beginning on or after August 23, 1981.

P.L. 97-248, §122(b)(1), added this paragraph (4). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

(I) related to the treatment of the individual's condition with respect to which a diagnosis of terminal illness has been made or

(II) equivalent to (or duplicative of) hospice care;

except that clause (ii) shall not apply to physicians' services furnished by the individual's attending physician (if not an employee of the hospice program) or to[1] services provided by (or under arrangements made by) the hospice program.

(B) After an individual makes such an election with respect to a 90- or 30-day period, the individual may revoke the election during the period, in which case—

(i) the revocation shall act as a waiver of the right to have payment made under this part for any hospice care benefits for the remaining time in such period and (for purposes of subsection (a)(4) and subparagraph (A)) the individual shall be deemed to have been provided such benefits during such entire period, and

(ii) the individual may at any time after the revocation execute a new election for a subsequent period, if the individual otherwise is entitled to hospice care benefits with respect to such a period.

(C) An individual may, once in each such period, change the hospice program with respect to which the election is made and such change shall not be considered a revocation of an election under subparagraph (B).

(D) For purposes of this title, an individual's election with respect to a hospice program shall no longer be considered to be in effect with respect to that hospice program after the date the individual's revocation or change of election with respect to that election takes effect.[2]

(e) For purposes of subsections (b) and (c)[3], inpatient hospital services, inpatient psychiatric hospital services, and post-hospital extended care[4] services shall be taken into account only if payment is or would be, except for this section or the failure to comply with the request and certification requirements of or under section 1814(a), made with respect to such services under this part.

(f)(1) The Secretary shall provide for coverage, under clause (B) of subsection (a)(2), of extended care services which are not post-hospital extended care services at such time and for so long as the Secretary determines, and under such terms and conditions (described in paragraph (2)) as the Secretary finds appropriate, that the inclusion of such services will not result in any increase in the total of payments made under this title and will not alter the acute care nature of the benefit described in subsection (a)(2).

(2) The Secretary may provide—

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[1] P.L. 97-448, §309(b)(5), struck out "other than", effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2] P.L. 96-499, §930(c), repealed the former subsection (d), effective with respect to services furnished on or after July 1, 1981.

P.L. 97-248, §122(b)(2), added this subsection (d). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[3] P.L. 96-499, §930(d)(1), struck out ", (c), and (d)" and substituted "and (c)", effective with respect to services furnished on or after July 1, 1981.

[4] P.L. 96-499, §930(d)(2), struck out "post-hospital extended care services, and post-hospital home health" and substituted "and post-hospital extended care", effective with respect to services furnished on or after July 1, 1981.

(A) for such limitations on the scope and extent of services described in subsection (a)(2)(B) and on the categories of individuals who may be eligible to receive such services, and

(B) notwithstanding sections 1814, 1861(v), and 1886, for such restrictions and alternatives on the amounts and methods of payment for services described in such subsection,

as may be necessary to carry out paragraph (1).[1]

(g)[2] For definition of "spell of illness", and for definitions of other terms used in this part, see section 1861.

DEDUCTIBLES AND COINSURANCE

SEC. 1813. [42 U.S.C. 1395e] (a)(1) The amount payable for inpatient hospital services furnished an individual during any spell of illness shall be reduced by a deduction equal to the inpatient hospital deductible or, if less, the charges imposed with respect to such individual for such services, except that, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed. Such amount shall be further reduced by a coinsurance amount equal to—

(A) one-fourth of the inpatient hospital deductible for each day (before the 91st day) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 60 days during such spell; and

(B) one-half of the inpatient hospital deductible for each day (before the day following the last day for which such individual is entitled under section 1812(a)(1) to have payment made on his behalf for inpatient hospital services during such spell of illness) on which such individual is furnished such services during such spell of illness after such services have been furnished to him for 90 days during such spell;

except that the reduction under this sentence for any day shall not exceed the charges imposed for that day with respect to such individual for such services (and for this purpose, if the customary charges for such services are greater than the charges so imposed, such customary charges shall be considered to be the charges so imposed).

(2) The amount payable to any provider of services under this part for services furnished an individual during any spell of illness shall be further reduced by a deduction equal to the cost of the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to him as part of such services during such spell of illness.

(3) The amount payable for post-hospital extended care services furnished an individual during any spell of illness shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day (before the 101st day) on which he is furnished such services after such services have been furnished to him for 20 days during such spell.

(4)(A) The amount payable for hospice care shall be reduced—

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[1] P.L. 97-248, §123(b), added this subsection (f), effective September 3, 1982.

[2] P.L. 97-248, §123(b), redesignated this subsection (f) as subsection (g), effective September 3, 1982.

(i) in the case of drugs and biologicals provided on an outpatient basis by (or under arrangements made by) the hospice program, by a coinsurance amount equal to an amount (not to exceed $5 per prescription) determined in accordance with a drug copayment schedule (established by the hospice program) which is related to, and approximates 5 percent of, the cost of the drug or biological to the program, and

(ii) in the case of respite care provided by (or under arrangements made by) the hospice program, by a coinsurance amount equal to 5 percent of the amount estimated by the hospice program (in accordance with regulations of the Secretary) to be equal to the amount of payment under section 1814(i) to that program for respite care;

except that the total of the coinsurance required under clause (ii) for an individual may not exceed for a hospice coinsurance period the inpatient hospital deductible applicable for the year in which the period began. For purposes of this subparagraph, the term "hospice coinsurance period" means, for an individual, a period of consecutive days beginning with the first day for which an election under section 1812(d) is in effect for the individual and ending with the close of the first period of 14 consecutive days on each of which such an election is not in effect for the individual.

(B) During the period of an election by an individual under section 1812(d)(1), no copayments or deductibles other than those under subparagraph (A) shall apply with respect to services furnished to such individual which constitute hospice care, regardless of the setting in which such services are furnished.[1]

(b)(1) The inpatient hospital deductible which shall be applicable for the purposes of subsection (a) shall be $40 in the case of any spell of illness beginning before 1969.

(2) The Secretary shall, between July 1 and October 1 of 1968, and of each year thereafter, determine and promulgate the inpatient hospital deductible which shall be applicable for the purposes of subsection (a) in the case of any inpatient hospital services or post-hospital extended care services furnished[2] during the succeeding calendar year. Such inpatient hospital deductible shall be equal to $45[3] multiplied by the ratio of (A) the current average per diem rate for inpatient hospital services for the calendar year preceding the promulgation, to (B) the current average per diem rate for such services for 1966. Any amount determined under the preceding sentence which is not a multiple of $4 shall be rounded to the nearest multiple of $4 (or, if it is midway between two multiples of $4, to the next higher multiple of $4). The current average per diem rate for any year shall be determined by the Secretary on the basis of the best information available to him (at the time the determination is made) as to the amounts paid under this part on account of inpatient hospital services furnished during such year, by hospitals which have agreements in effect under section 1866, to individuals who are

[1] P.L. 97-248, §122(e), added paragraph (4). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2] P.L. 97-35, §2131(a), struck out "spell of illness beginning" and substituted "inpatient hospital services or post-hospital extended care services furnished", effective for inpatient hospital services or post-hospital extended care services furnished on or after January 1, 1982.

[3] P.L. 97-35, §2132(a), struck out "40" and substituted "45", applicable with respect to inpatient hospital services and post-hospital extended care services furnished in calendar years beginning with calendar year 1982.

entitled to hospital insurance benefits under section 226, plus the amount which would have been so paid but for subsection (a)(1) of this section.

CONDITIONS OF AND LIMITATIONS ON PAYMENT FOR SERVICES

Requirement of Requests and Certifications

SEC. 1814. [42 U.S.C. 1395f] (a) Except as provided in subsections (d) and (g) and in section 1876, payment for services furnished an individual may be made only to providers of services which are eligible therefor under section 1866 and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner, and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year;

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations, except that the first of such recertifications shall be required in each case of inpatient hospital services not later than the 20th day of such period) that—

(A) in the case of inpatient psychiatric hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the psychiatric treatment of an individual; and (i) such treatment can or could reasonably be expected to improve the condition for which such treatment is or was necessary or (ii) inpatient diagnostic study is or was medically required and such services are or were necessary for such purposes;

(B) in the case of inpatient tuberculosis hospital services, such services are or were required to be given on an inpatient basis, by or under the supervision of a physician, for the treatment of an individual for tuberculosis; and such treatment can or could reasonably be expected to (i) improve the condition for which such treatment is or was necessary or (ii) render the condition noncommunicable;

(C) in the case of post-hospital extended care services, such services are or were required to be given because the individual needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services, which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis, for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpa-

tient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) prior to transfer to the skilled nursing facility or for a condition requiring such extended care services which arose after such transfer and while he was still in the facility for treatment of the condition or conditions for which he was receiving such inpatient hospital services;

(D) in the case of[1] home health services, such services are or were required because the individual is or was confined to his home (except when receiving items and services referred to in section 1861(m)(7)) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy[2]; a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician; and such services are or were furnished while the individual was under the care of a physician; or

(E) in the case of inpatient hospital services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure, requires hospitalization in connection with the provision of such services;[3]

[(F) Stricken.[4]]

(3) with respect to inpatient hospital services (other than inpatient psychiatric hospital services and inpatient tuberculosis hospital services) which are furnished over a period of time, a physician certifies that such services are required to be given on an inpatient basis for such individual's medical treatment, or that inpatient diagnostic study is medically required and such services are necessary for such purpose, except that (A) such certification shall be furnished only in such cases, with such frequency, and accompanied by such supporting material, appropriate to the cases involved, as may be provided by regulations, and (B) the first such certification required in accordance with clause[5] (A) shall be furnished no later than the 20th day of such

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[1]P.L. 96-499, §930(f)(1), struck out "post-hospital", effective with respect to services furnished on or after July 1, 1981.

[2]P.L. 96-499, §930(f)(3), struck out ", for any of the conditions with respect to which he was receiving inpatient hospital services (or services which would constitute inpatient hospital services if the institution met the requirements of paragraphs (6) and (9) of section 1861(e)) or post-hospital extended care services", effective with respect to services furnished on or after July 1, 1981.

P.L. 97-35, §2122(a)(1), struck out "needed skilled nursing care on an intermittent basis, or physical, occupational, [*] or speech therapy" and substituted "needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy", effective with respect to services furnished pursuant to plans of treatment implemented after November 1981.

[*]P.L. 96-499, §930(f)(2), inserted ", occupational,", effective with respect to services furnished on or after July 1, 1981.

[3]P.L. 96-499, §936(b), amended subparagraph (E) in its entirety, effective with respect to services provided on or after July 1, 1981.

[4]P.L. 96-499, §931(b), added subparagraph (F), effective April 1, 1981.

P.L. 97-35, §2121(b)(3), struck out subparagraph (F), effective with respect to services furnished in detoxification facilities for inpatient stays beginning on or after August 23, 1981.

[5]As in original. Possibly should be "subparagraph".

period;

(4) in the case of inpatient psychiatric hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving (A) intensive treatment services, (B) admission and related services necessary for a diagnostic study, or (C) equivalent services;

(5) in the case of inpatient tuberculosis hospital services, the services are those which the records of the hospital indicate were furnished to the individual during periods when he was receiving treatment which could reasonably be expected to (A) improve his condition or (B) render it noncommunicable;

(6) with respect to inpatient hospital services furnished such individual after the 20th day of a continuous period of such services and with respect to post-hospital extended care services furnished after such day of a continuous period of such services as may be prescribed in or pursuant to regulations, there was not in effect, at the time of admission of such individual to the hospital or skilled nursing facility, as the case may be, a decision under section 1866(d) (based on a finding that utilization review of long-stay cases is not being made in such hospital or facility);

(7) with respect to inpatient hospital services or post-hospital extended care services furnished such individual during a continuous period, a finding has not been made (by the physician members of the committee or group, as described in section 1861(k)(4), including any finding made in the course of a sample or other review of admissions to the institution) pursuant to the system of utilization review that further inpatient hospital services or further post-hospital extended care services, as the case may be, are not medically necessary; except that, if such a finding has been made, payment may be made for such services furnished before the 4th day after the day on which the hospital or skilled nursing facility, as the case may be, received notice of such finding; and

(8) in the case of hospice care provided an individual—

(A)(i) in the first 90-day period—

(I) the individual's attending physician (as defined in section 1861(dd)(3)(B)), and

(II) the medical director (or physician member of the interdisciplinary group described in section 1861(dd)(2)(B)) of the hospice program providing (or arranging for) the care,

each certify, not later than two days after hospice care is initiated, that the individual is terminally ill (as defined in section 1861(dd)(3)(A)), and

(ii) in a subsequent 90- or 30-day period, the medical director or physician described in clause (i)(II) recertifies at the beginning of the period that the individual is terminally ill;

(B) a written plan for providing hospice care with respect to such individual has been established (before such care is provided by, or under arrangements made by, that hospice program) and is periodically reviewed by the individual's attending physician and by the medical director (and the

interdisciplinary group described in section 1861(dd)(2)(B)) of the hospice program; and

(C) such care is being or was provided pursuant to such plan of care.[1]

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes certification of the kind provided in subparagraph (A), (B), (C), (D), or (E) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractural[2] relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.[3]

Amount Paid to Providers

(b) The amount paid to any provider of services (other than a hospice program providing hospice care)[4] with respect to services for which payment may be made under this part shall, subject to the provisions of sections 1813 and 1886[5], be—

(1) except as provided in paragraph (3), the lesser of (A) the reasonable cost of such services, as determined under section 1861(v) and as further limited by section 1881(b)(2)(B), or (B) the customary charges with respect to such services;

(2) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such reasonable cost which the Secretary finds will provide fair compensation to such provider for such services; or

(3) if some or all of the hospitals in a State have been reimbursed for services (for which payment may be made under this part) pursuant to a reimbursement system approved as a demonstration project under section 402 of the Social Security Amendments of 1967[6] or section 222 of the Social Security Amendments of 1972[7], if the rate of increase in such hospitals in their costs per hospital inpatient admission of individuals entitled to benefits under this part over the duration of such project was equal to or less than such rate of increase for admissions of

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[1] P.L. 97-248, §122(c)(1), added this paragraph. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2] As in original. Should be "contractual".

[3] P.L. 96-499, §930(e), added the preceding sentence, effective with respect to services furnished on or after July 1, 1981.

[4] P.L. 97-248, §122(c)(2)(A), inserted "(other than a hospice program providing hospice care)". For the effective date, see P.L. 97-248, §122(h)(1), p. 791.

[5] P.L. 97-248, §101(c)(1)(A), struck out "section 1813" and substituted "sections 1813 and 1886", effective September 3, 1982.

[6] P.L. 90-248.

[7] P.L. 92-603.

such individuals with respect to all hospitals in the United States during such period, and if either the State has legislative authority to operate such system and the State elects to have reimbursement to such hospitals made in accordance with this paragraph or the system is operated through a voluntary agreement of hospitals and such hospitals elect to have reimbursement to those hospitals made in accordance with this paragraph, then the Secretary may provide for continuation of reimbursement to such hospitals under such system until the Secretary determines that—

(A) a third-party payor reimburses such a hospital on a basis other than under such system, or

(B) the rate of increase for the previous three-year period in such hospitals in costs per hospital inpatient admission of individuals entitled to benefits under this part is greater than such rate of increase for admissions of such individuals with respect to all hospitals in the United States for such period.

In the case of any State which has had such a demonstration project reimbursement system in continuous operation since July 1, 1977, the Secretary shall provide under paragraph (3) for continuation of reimbursement to hospitals in the State under such system until the first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State[1] that either of the conditions described in subparagraph (A) or (B) of such paragraph has occurred.

No Payments to Federal Providers of Services

(c) Subject to section 1880, no payment may be made under this part (except under subsection (d) or subsection (h)) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

Payments for Emergency Hospital Services

(d)(1) Payments shall also be made to any hospital for inpatient hospital services furnished in a calendar year, by the hospital or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital insurance benefits under section 226 even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has elected to claim payments for all such inpatient emergency services and for the emergency outpatient services referred to in section 1835(b) furnished during such year. Such payments shall be made only in the

[1] P.L. 97-248, §101(c)(1)(B), struck out "Secretary determines" and substituted "first day of the seventh month beginning after the date the Secretary determines and notifies the Governor of the State", effective September 3, 1982.

amounts provided under subsection (b) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may be made on the basis of an itemized bill to an individual entitled to hospital insurance benefits under section 226 for services described in paragraph (1) which are emergency services if (A) payment cannot be made under paragraph (1) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement.

(3) The amounts payable under the preceding paragraph with respect to services described therein shall, subject to the provisions of section 1813, be equal to 60 percent of the hospital's reasonable charges for routine services furnished in the accommodations occupied by the individual or in semiprivate accommodations (as defined in section 1861(v)(4)), whichever is less, plus 80 percent of the hospital's reasonable charges for ancillary services. If separate charges for routine and ancillary services are not made by the hospital, reimbursement may be based on two-thirds of the hospital's reasonable charges for the services received but not to exceed the charges which would have been made if the patient had occupied semiprivate accommodations. For purposes of the preceding provisions of this paragraph, the term "routine services" shall mean the regular room, dietary, and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made; the term "ancillary services" shall mean those special services for which charges are customarily made in addition to routine services.

Payment for Inpatient Hospital Services Prior to Notification of Noneligibility

(e) Notwithstanding that an individual is not entitled to have payment made under this part for inpatient hospital services furnished by any hospital, payment shall be made to such hospital (unless it elects not to receive such payment or, if payment has already been made by or on behalf of such individual, fails to refund such payment within the time specified by the Secretary) for such services which are furnished to the individual prior to notification to such hospital from the Secretary of his lack of entitlement, if such payments are precluded only by reason of section 1812 and if such hospital complies with the requirements of and regulations under this title with respect to such payments, has acted in good faith and without knowledge of such lack of entitlement, and has acted reasonably in assuming entitlement existed. Payment under the preceding sentence may not be made for services furnished an individual pursuant to any admission after the 6th elapsed day (not including as an elapsed day Saturday, Sunday, or a legal holiday) after the day on which such admission occurred.

Payment for Certain Inpatient Hospital Services Furnished Outside the United States

(f)(1) Payment shall be made for inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States, or under arrangements (as defined in section 1861(w)) with it, if—

(A) such individual is a resident of the United States, and

(B) such hospital was closer to, or substantially more accessible from, the residence of such individual than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(2) Payment may also be made for emergency inpatient hospital services furnished to an individual entitled to hospital insurance benefits under section 226 by a hospital located outside the United States if—

(A) such individual was physically present—

(i) in a place within the United States; or

(ii) at a place within Canada while traveling without unreasonable delay by the most direct route (as determined by the Secretary) between Alaska and another State;

at the time the emergency which necessitated such inpatient hospital services occurred, and

(B) such hospital was closer to, or substantially more accessible from, such place than the nearest hospital within the United States which was adequately equipped to deal with, and was available for the treatment of, such individual's illness or injury.

(3) Payment shall be made in the amount provided under subsection (b) to any hospital for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual by the hospital or under arrangements (as defined in section 1861(w)) with it if (A) the Secretary would be required to make such payment if the hospital had an agreement in effect under this title and otherwise met the conditions of payment hereunder, (B) such hospital elects to claim such payment, and (C) such hospital agrees to comply, with respect to such services, with the provisions of section 1866(a).

(4) Payment for the inpatient hospital services described in paragraph (1) or (2) furnished to an individual entitled to hospital insurance benefits under section 226 may be made on the basis of an itemized bill to such individual if (A) payment for such services cannot be made under paragraph (3) solely because the hospital does not elect to claim such payment, and (B) such individual files application (submitted within such time and in such form and manner and by such person, and continuing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amount payable with respect to such services shall, subject to the provisions of section 1813, be equal to the amount which would be payable under subsection (d)(3).

Payment for Services of a Physician Rendered in a Teaching Hospital

(g) For purposes of services for which the reasonable cost thereof is determined under section 1861(v)(1)(D) (or would be if section 1886 did not apply)[1], payment under this part shall be made to such fund as

[1] P.L. 98-21, §602(b), inserted "(or would be if section 1886 did not apply)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost

may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1) such hospital has an agreement with the Secretary under section 1866, and

(2) the Secretary has received written assurances that (A) such payment will be used by such fund solely for the improvement of care of hospital patients or for educational or charitable purposes and (B) the individuals who were furnished such services or any other persons will not be charged for such services (or if charged, provision will be made for return of any moneys incorrectly collected).

Payment for Certain Hospital Services Provided in Veterans' Administration Hospitals

(h)(1) Payments shall also be made to any hospital operated by the Veterans' Administration for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1861(w)) with it, to an individual entitled to hospital benefits under section 226 even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this title.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Veterans' Administration for such services, or (if less) the amount that would be payable for such services under subsection (b) and section 1886[1] (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

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reporting period that begins on or after October 1, 1983.

[1]P.L. 98-21, §602(c), struck out "reasonable costs for such services" and substituted "amount that would be payable for such services under subsection (b) and section 1886", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

Payment for Hospice Care[1]

(i)(1) Subject to the limitation under paragraph (2) and the provisions of section 1813(a)(4), the amount paid to a hospice program with respect to hospice care for which payment may be made under this part shall be an amount equal to the costs which are reasonable and related to the cost of providing hospice care or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations (including those authorized under section 1861(v)(1)(A)), except that no payment may be made[2] for bereavement counseling and no reimbursement may be made for other counseling services (including nutritional and dietary counseling) as separate services.

(2)(A) The amount of payment made under this part for hospice care provided by (or under arrangements made by) a hospice program[3] for an accounting year may not exceed the "cap amount"[4] for the year (computed under subparagraph (B)) multiplied by the number of medicare beneficiaries in the hospice program in that year (determined under subparagraph (C)).

(B) For purposes of subparagraph (A), the "cap amount" for a year is $6,500, increased or decreased, for accounting years that end after October 1, 1984, by the same percentage as the percentage increase or decrease, respectively, in the medical care expenditure category of the Consumer Price Index for All Urban Consumers (United States city average), published by the Bureau of Labor Statistics, from March 1984 to the fifth month of the accounting year.[5]

(C) For purposes of subparagraph (A), the "number of medicare beneficiaries" in a hospice program in an accounting year is equal to the number of individuals who have made an election under subsection (d) with respect to the hospice program and have been provided hospice care by (or under arrangements made by) the hospice program under this part in the accounting year, such number reduced to reflect the proportion of hospice care that each such individual was provided in a previous or subsequent accounting year or under a plan of care established by another hospice program.[6]

Elimination of Lesser-of-Cost-or-Charges Provision[7]

(j)[8](1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this title.

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[1]P.L. 97-248, §122(c)(2)(B), added subsection (i). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

P.L. 97-448, §309(b)(6), changed the typeface on this catchline, effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, §122(h)(1), p. 791.

[2]P.L. 97-448, §309(b)(7), inserted "made", effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, §122(h)(1), p. 791.

[3]P.L. 98-90, §1(1), struck out "located in a region (as defined by the Secretary)", effective August 29, 1983.

[4]P.L. 98-90, §1(1), struck out "for the region", effective August 29, 1983.

[5]P.L. 98-90, §1(2), amended subparagraph (B) in its entirety, effective August 29, 1983.

[6]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(k) [as redesignated by P.L. 97-448, §309(a)(6)], with respect to waivers of limitations. [P.L. 97-448, §309(a)(6), with respect to P.L. 97-248, redesignated §122(j) as §122(k) effective as if it had been so designated originally in P.L. 97-248.]

[7]P.L. 97-248, §110, added this subsection as §1886(d), effective September 3, 1982.

P.L. 98-21, §601(d)(2), added this catchline, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[8]P.L. 98-21, §601(d)(2), redesignated this subsection as §1814(j), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this title for services provided by that class of provider.

(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

(A) Clause (B) of paragraph (1) and paragraph (2) of subsection (b)[1].

(B) So much of subparagraph (A) of section 1833(a)(2) as provides for payment other than of the reasonable cost of such services, as determined under section 1861(v).

(C) Subclause (II) of clause (i) and clause (ii) of section 1833(a)(2)(B).

PAYMENT TO PROVIDERS OF SERVICES[2]

SEC. 1815. [42 U.S.C. 1395g] (a) The Secretary shall periodically determine the amount which should be paid under this part to each provider of services with respect to the services furnished by it, and the provider of services shall be paid, at such time or times as the Secretary believes appropriate (but not less often than monthly) and prior to audit or settlement by the General Accounting Office, from the Federal Hospital Insurance Trust Fund, the amounts so determined, with necessary adjustments on account of previously made overpayments or underpayments; except that no such payments shall be made to any provider unless it has furnished such information as the Secretary may request in order to determine the amounts due such provider under this part for the period with respect to which the amounts are being paid or any prior period.

(b) No payment shall be made to a provider of services which is a hospital for or with respect to services furnished by it for any period with respect to which it is deemed, under section 1861(w)(2), to have in effect an arrangement with a quality control and peer review organization[3] for the conduct of utilization review activities by such organization unless such hospital has paid to such organization the amount due (as determined pursuant to such section) to such organization for the review activities conducted by it pursuant to such arrangements or such hospital has provided assurances satisfactory to the Secretary that such organization will promptly be paid the amount so due to it from the proceeds of the payment claimed by the hospital. Payment under this title for utilization review activities provided by a quality control and peer review organization[4] pursuant

[1] P.L. 98-21, §601(d)(1), struck out "section 1814(b)" and substituted "subsection (b)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §111, with respect to regulations concerning elimination of private room subsidy, and §120, with respect to temporary delay in periodic interim payments.

[3] P.L. 97-248, §148(b), struck out "Professional Standards Review Organization" and substituted "quality control and peer review organization", effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[4] P.L. 97-248, §148(b), struck out "Professional Standards Review Organization" and substituted "quality control and peer review organization", effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

to an arrangement or deemed arrangement with a hospital under section 1861(w)(2) shall be calculated without any requirement that the reasonable cost of such activities be apportioned among the patients of such hospital, if any, to whom such activities were not applicable.

(c) No payment which may be made to a provider of services under this title for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such provider under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(d) Whenever a final determination is made that the amount of payment made under this part to a provider of services was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.[1]

USE OF PUBLIC AGENCIES OR PRIVATE ORGANIZATIONS TO FACILITATE PAYMENT TO PROVIDERS OF SERVICES[2]

SEC. 1816. [42 U.S.C. 1395h] (a) If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to the provisions of section 1878 and to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers (and to providers assigned to such agency or organization under subsection (e)), and for the making of such payments by such agency or organization to such providers (and to providers assigned to such agency or organization under subsection (e)). Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify

[1] P.L. 97-248, §117(a)(1), added this subsection, effective with respect to final determinations made on or after September 3, 1982.

[2] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §118, with respect to funds for audit and medical claims review.

as hospitals, extended care facilities, or home health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection.

(b) The Secretary shall not enter into or renew an agreement with any agency or organization under this section unless—

(1) he finds—

(A) after applying the standards, criteria, and procedures developed under subsection (f), that to do so is consistent with the effective and efficient administration of this part, and

(B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 226, and the agreement provides for such assistance; and

(2) such agency or organization agrees—

(A) to furnish to the Secretary such of the information acquired by it in carrying out its agreement under this section, and

(B) to provide the Secretary with access to all such data, information, and claims processing operations,

as the Secretary may find necessary in performing his functions under this part.

(c) An agreement with any agency or organization under this section may contain such terms and conditions as the Secretary finds necessary or appropriate, may provide for advances of funds to the agency or organization for the making of payments by it under subsection (a), and shall provide for payment of so much of the cost of administration of the agency or organization as is determined by the Secretary to be necessary and proper for carrying out the functions covered by the agreement.

(d) If the nomination of an agency or organization as provided in this section is made by a group or association of providers of services, it shall not be binding on members of the group or association which notify the Secretary of their election to that effect. Any provider may, upon such notice as may be specified in the agreement under this section with an agency or organization, withdraw its nomination to receive payments through such agency or organization. Any provider which has withdrawn its nomination, and any provider which has not made a nomination, may elect to receive payments from any agency or organization which has entered into an agreement with the Secretary under this section if the Secretary and such agency or organization agree to it.

(e)(1) Notwithstanding subsections (a) and (d), the Secretary, after taking into consideration any preferences of providers of services, may assign or reassign any provider of services to any agency or

organization which has entered into an agreement with him under this section, if he determines, after applying the standards, criteria, and procedures developed under subsection (f), that such assignment or reassignment would result in the more effective and efficient administration of this part.

(2) Notwithstanding subsections (a) and (d), the Secretary may (subject to the provisions of paragraph (4)) designate a national or regional agency or organization which has entered into an agreement with him under this section to perform functions under the agreement with respect to a class of providers of services in the Nation or region (as the case may be), if he determines, after applying the standards, criteria, and procedures developed under subsection (f), that such designation would result in more effective and efficient administration of this part.

(3)(A) Before the Secretary makes an assignment or reassignment under paragraph (1) of a provider of services to other than the agency or organization nominated by the provider, he shall furnish (i) the provider and such agency or organization with a full explanation of the reasons for his determination as to the efficiency and effectiveness of the agency or organization to perform the functions required under this part with respect to the provider, and (ii) such agency or organization with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code.

(B) Before the Secretary makes a designation under paragraph (2) with respect to a class of providers of services, he shall furnish (i) such providers and the agencies and organizations adversely affected by such designation with a full explanation of the reasons for his determination as to the efficiency and effectiveness of such agencies and organizations to perform the functions required under this part with respect to such providers, and (ii) the agencies and organizations adversely affected by such designation with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5, United States Code.

(4) Notwithstanding subsections (a) and (d) and paragraphs (1), (2), and (3) of this subsection, the Secretary shall designate regional agencies or organizations which have entered into an agreement with him under this section to perform functions under such agreement with respect to home health agencies (as defined in section 1861(o)) in the region, except that in assigning such agencies to such designated regional agencies or organizations the Secretary shall assign a home health agency which is a subdivision of a hospital (and such agency and hospital are affiliated or under common control) only if, after applying such criteria relating to administrative efficiency and effectiveness as he shall promulgate, he determines that such assignment would result in the more effective and efficient administration of this title.

(5) Notwithstanding any other provision of this title, the Secretary shall designate the agency or organization which has entered into an agreement under this section to perform functions under such an agreement with respect to each hospice program, except that with respect to a hospice program which is a subdivision of a provider of services (and such hospice program and provider of services are under common control) due regard shall be given to the agency or

organization which performs the functions under this section for the provider of services.[1]

(f) In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (1) overall performance of claims processing and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (2) performance of such functions with respect to specific providers of services, and the Secretary shall establish, by regulation, standards and criteria with respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that the agency or organization serves only providers located in a single State.

(g) An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds, after applying the standards, criteria, and procedures developed under subsection (f) and after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(h) An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(i)(1) No individual designated pursuant to an agreement under this section as a certifying officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2).

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[1] P.L. 97-248, §122(c)(3), added this paragraph. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

FEDERAL HOSPITAL INSURANCE TRUST FUND[1]

SEC. 1817. [42 U.S.C. 1395i] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Hospital Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part. There are hereby appropriated to the Trust Fund for the fiscal year ending June 30, 1966, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1) the taxes imposed by sections 3101(b) and 3111(b) of the Internal Revenue Code of 1954[2] with respect to wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of such Code[3] after December 31, 1965, as determined by the Secretary of the Treasury by applying the applicable rates of tax under such sections to such wages, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with such reports; and

(2) the taxes imposed by section 1401(b) of the Internal Revenue Code of 1954[4] with respect to self-employment income reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of such Code[5], as determined by the Secretary of the Treasury by applying the applicable rate of tax under such section to such self-employment income, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of records of self-employment established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

The amounts appropriated by the preceding sentence shall be transferred monthly on the first day of each calendar month[6] from the general fund in the Treasury to the Trust Fund, such amounts to be determined on the basis of estimates by the Secretary of the Treasury of the taxes, specified in the preceding sentence, to be paid to or deposited into the Treasury during such month[7]; and proper adjustments shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or were less than the taxes specified in such sentence. All amounts transferred to the Trust Fund under the preceding sentence shall be invested by the Managing Trustee in the same manner and to the same extent as the

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[1]See P.L. 89-97, "Social Security Amendments of 1965", §103(c), for the transitional provision for uninsured individuals.

See P.L. 95-210, [Social Security—Rural Health Clinic Services], §3, with respect to demonstration projects for physician-directed clinics in urban medically underserved areas.

See P.L. 98-21, "Social Security Amendments of 1983", §151(b)(3), with respect to certain reimbursements to the trust funds.

[2]See P.L. 83-591, "Internal Revenue Code of 1954", §3101(b), p. 813.

[3]P.L. 83-591.

[4]See P.L. 83-591, "Internal Revenue Code of 1954", §1401(b), p. 803.

[5]P.L. 83-591.

[6]P.L. 98-21, §141(b)(1)(A), struck out "from time to time" and substituted "monthly on the first day of each calendar month", effective May 1, 1983.

[7]P.L. 98-21, §141(b)(1)(B), struck out "paid to or deposited into the Treasury" and substituted "to be paid to or deposited into the Treasury during such month", effective May 1, 1983.

other assets of the Trust Fund; and the Trust Fund shall pay interest to the general fund on the amount so transferred on the first day of any month at a rate (calculated on a daily basis, and applied against the difference between the amount so transferred on such first day and the amount which would have been transferred to the Trust Fund up to that day under the procedures in effect on January 1, 1983) equal to the rate earned by the investments of the Trust Fund in the same month under subsection (c).[1]

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate[2]. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;[3]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided,* That the certification shall not refer to economic assumptions underlying the Trustee's report.[4] Such

[1]P.L. 98-21, §141(b)(2), added the preceding sentence, effective May 1, 1983.

[2]P.L. 98-21, §341(b)(1), struck out ", Education, and Welfare, all ex officio" and substituted "and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate", effective April 20, 1983.

[3]See P.L. 98-21, "Social Security Amendments of 1983", §154(d), with respect to the due date of the annual report of the Boards of Trustees of the Trust Funds for 1983.

[4]P.L. 98-21, §154(b), inserted the preceding sentence, effective April 20, 1983.

report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.[1]

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act[2], as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month; except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f)(1) The Managing Trustee is directed to pay from time to time from the Trust Fund into the Treasury the amount estimated by him as taxes imposed under section 3101(b) which are subject to refund under section 6413(c) of the Internal Revenue Code of 1954[3] with respect to wages paid after December 31, 1965. Such taxes shall be determined on the basis of the records of wages established and maintained by the Secretary of Health, Education, and Welfare in accordance with the wages reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954[4], and the Secretary of Health, Education, and Welfare shall

[1] P.L. 98-21, §341(b)(2), added the preceding sentence, effective April 20, 1983.

[2] P.L. 97-258, §5(b) [96 Stat. 1068, 1072], repealed the Second Liberty Bond Act [P.L. 65-43; Act of September 24, 1917; Chapter 56; 40 Stat. 288]. Under P.L. 97-258, §4(b), references to the Second Liberty Bond Act are deemed to be references to corresponding provisions of Title 31 of the United States Code. See, instead, Chapter 31 of Title 31 of the U.S. Code.

[3] See P.L. 83-591, "Internal Revenue Code of 1954", §3101(b), p. 813.

[4] P.L. 83-591.

furnish the Managing Trustee such information as may be required by the Managing Trustee for such purpose. The payments by the Managing Trustee shall be covered into the Treasury as repayments to the account for refunding internal revenue collections.

(2) Repayments made under paragraph (1) shall not be available for expenditures but shall be carried to the surplus fund of the Treasury. If it subsequently appears that the estimates under such paragraph in any particular period were too high or too low, appropriate adjustments shall be made by the Managing Trustee in future payments.

(g) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(h) The Managing Trustee shall also pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(i) There are authorized to be made available for expenditure out of the Trust Fund such amounts as are required to pay travel expenses, either on an actual cost or commuted basis, to parties, their representatives, and all reasonably necessary witnesses for travel within the United States (as defined in section 210(i)) to attend reconsideration interviews and proceedings before administrative law judges with respect to any determination under this title. The amount available under the preceding sentence for payment for air travel by any person shall not exceed the coach fare for air travel between the points involved unless the use of first-class accommodations is required (as determined under regulations of the Secretary) because of such person's health condition or the unavailability of alternative accommodations; and the amount available for payment for other travel by any person shall not exceed the cost of travel (between the points involved) by the most economical and expeditious means of transportation appropriate to such person's health condition, as specified in such regulations.

(j)(1) If at any time prior to January 1988[1] the Managing Trustee determines that borrowing authorized under this subsection is appropriate in order to best meet the need for financing the benefit payments from the Federal Hospital Insurance Trust Fund, the Managing Trustee may, subject to paragraph (5),[2] borrow such amounts as he determines to be appropriate from either the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disabili-

[1] P.L. 98-21, §142(b)(1)(A), struck out "1983" and substituted "1988", effective April 20, 1983.
[2] P.L. 98-21, §142(b)(1)(B), inserted ", subject to paragraph (5),", effective April 20, 1983.

ty Insurance Trust Fund for transfer to and deposit in the Federal Hospital Insurance Trust Fund.

(2) In any case were a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), there shall be transferred on the last day of each month after such loan is made[1], from such Trust Fund to the lending Trust Fund, the total interest accrued to such day[2] with respect to the unrepaid balance of such loan at a rate equal to the rate which the lending Trust Fund would earn on the amount involved if the loan were an investment under subsection (c) (even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)[3].

(3)(A)[4] If in any month after a loan has been made to the Federal Hospital Insurance Trust Fund under paragraph (1), the Managing Trustee determines that the assets of such Trust Fund are sufficient to permit repayment of all or part of any loans made to such Fund under paragraph (1), he shall make such repayments as he determines to be appropriate.

(B)(i) If on the last day of any year after a loan has been made under paragraph (1) by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Hospital Insurance Trust Fund, the Managing Trustee determines that the Hospital Insurance Trust Fund ratio exceeds 15 percent, he shall transfer from such Trust Fund to the lending trust fund an amount that—

(I) together with any amounts transferred to another lending trust fund under this paragraph for such year, will reduce the Hospital Insurance Trust Fund ratio to 15 percent; and

(II) does not exceed the outstanding balance of such loan.

(ii) Amounts required to be transferred under clause (i) shall be transferred on the last day of the first month of the year succeeding the year in which the determination described in clause (i) is made.

(iii) For purposes of this subparagraph, the term "Hospital Insurance Trust Fund ratio" means, with respect to any calendar year, the ratio of—

(I) the balance in the Federal Hospital Insurance Trust Fund, as of the last day of such calendar year; to

(II) the amount estimated by the Secretary to be the total amount to be paid from the Federal Hospital Insurance Trust Fund during the calendar year following such calendar year (other than payments of interest on, and repayments of, loans from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund under paragraph (1)), and reducing the amount of any transfer to the Railroad Retirement Account by the amount of any transfers into such Trust Fund from the Railroad Retirement Account.[5]

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[1]P.L. 98-21, §142(b)(2)(A)(i), struck out "from time to time" and substituted "on the last day of each month after such loan is made", effective with respect to months beginning after May 20, 1983.

[2]P.L. 98-21, §142(b)(2)(A)(ii), struck out "interest" and substituted "the total interest accrued to such day", effective with respect to months beginning after May 20, 1983.

[3]P.L. 98-21, §142(b)(2)(A)(iii), inserted "(even if such an investment would earn interest at a rate different than the rate earned by investments redeemed by the lending fund in order to make the loan)", effective with respect to months beginning after May 20, 1983.

[4]P.L. 98-21, §142(b)(3)(A), inserted "(A)", effective April 20, 1983.

[5]P.L. 98-21, §142(b)(3)(B), added subparagraph (B), effective April 20, 1983.

(C)(i) The full amount of all loans made under paragraph (1) (whether made before or after January 1, 1983) shall be repaid at the earliest feasible date and in any event no later than December 31, 1989.

(ii) For the period after December 31, 1987 and before January 1, 1990, the Managing Trustee shall transfer each month from the Federal Hospital Insurance Trust Fund to any Trust Fund that is owed any amount by the Federal Hospital Insurance Trust Fund on a loan made under paragraph (1), an amount not less than an amount equal to (I) the amount owed to such Trust Fund by the Federal Hospital Insurance Trust Fund at the beginning of such month (plus the interest accrued on the outstanding balance of such loan during such month), divided by (II) the number of months elapsing after the preceding month and before January 1990. The Managing Trustee may, during this period, transfer larger amounts than prescribed by the preceding sentence.[1]

(4) The Board of Trustees shall make a timely report to the Congress of any amounts transferred (including interest payments) under this subsection.[2]

(5)(A) No amounts may be loaned by the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund under paragraph (1) during any month if the OASDI trust fund ratio for such month is less than 10 percent.

(B) For purposes of this paragraph, the term "OASDI trust fund ratio" means, with respect to any month, the ratio of—

(i) the combined balance in the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, reduced by the outstanding amount of any loan (including interest thereon) theretofore made to either such Trust Fund from the Federal Hospital Insurance Trust Fund under section 201(l), as of the last day of the second month preceding such month, to

(ii) the amount obtained by multiplying by twelve the total amount which (as estimated by the Secretary) will be paid from the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund during the month for which such ratio is to be determined for all purposes authorized by section 201 (other than payments of interest on, or repayments of, loans from the Federal Hospital Insurance Trust Fund under section 201(l)), but excluding any transfer payments between such trust funds and reducing the amount of any transfers to the Railroad Retirement Account by the amount of any transfers into either such trust fund from that Account.[3]

HOSPITAL INSURANCE BENEFITS FOR UNINSURED INDIVIDUALS NOT OTHERWISE ELIGIBLE

SEC. 1818. [42 U.S.C. 1395i-2] (a) Every individual who—

(1) has attained the age of 65,

(2) is enrolled under part B of this title,

(3) is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who

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[1] P.L. 98-21, §142(b)(3)(B), added subparagraph (C), effective April 20, 1983.
[2] P.L. 97-123, §1(b), added subsection (j), effective December 29, 1981.
[3] P.L. 98-21, §142(b)(4), added paragraph (5), effective April 20, 1983.

has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this section, and

(4) is not otherwise entitled to benefits under this part,

shall be eligible to enroll in the insurance program established by this part.[1]

(b) An individual may enroll under this section only in such manner and form as may be prescribed in regulations, and only during an enrollment period prescribed in or under this section.

(c) The provisions of section 1837 (except subsection (f) thereof), section 1838, subsection (a)[2] of section 1839, and subsections (f) and (h) of section 1840 shall apply to persons authorized to enroll under this section except that—

(1) individuals who meet the conditions of subsection (a)(1), (3), and (4) on or before the last day of the seventh month after the month in which this section is enacted[3] may enroll under this part and (if not already so enrolled) may also enroll under part B during an initial general enrollment period which shall begin on the first day of the second month which begins after the date on which this section is enacted[4] and shall end on the last day of the tenth month after the month in which this Act is enacted[5];

(2) in the case of an individual who first meets the conditions of eligibility under this section on or after the first day of the eighth month after the month in which this section is enacted[6], the initial enrollment period shall begin on the first day of the third month before the month in which he first becomes eligible and shall end 7 months later;

(3) in the case of an individual who enrolls pursuant to paragraph (1) of this subsection, entitlement to benefits shall begin on—

(A) the first day of the second month after the month in which he enrolls,

(B) July 1, 1973, or

(C) the first day of the first month in which he meets the requirements of subsection (a),

whichever is the latest;

(4) termination of coverage under this section by the filing of notice that the individual no longer wishes to participate in the hospital insurance program shall take effect at the close of the month following the month in which such notice is filed;

(5) an individual's entitlement under this section shall terminate with the month before the first month in which he becomes eligible for hospital insurance benefits under section 226 of this Act or section 103 of the Social Security Amendments of 1965[7]; and upon such termination, such individual shall be deemed, solely for purposes of hospital insurance entitlement, to have filed in such first month the application required to establish such entitlement; and

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[1] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §125, with respect to special enrollment provisions for merchant seamen.

[2] P.L. 98-21, §606(a)(3)(D), struck out "(c)" and substituted "(a)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[3] October 30, 1972 [P.L. 92-603; 86 Stat. 1374].

[4] October 30, 1972 [P.L. 92-603; 86 Stat. 1374].

[5] As in original. Enactment date of the Social Security Act is August 14, 1935.

[6] October 30, 1972 [P.L. 92-603; 86 Stat. 1374].

[7] P.L. 89-97.

(6) termination of coverage for supplementary medical insurance shall result in simultaneous termination of hospital insurance benefits for uninsured individuals who are not otherwise entitled to benefits under this Act.

(d)(1) The monthly premium of each individual for each month in his coverage period before July 1974 shall be $33.

(2) The Secretary shall, during the next to last calendar quarter of each year[1] determine and promulgate the dollar amount (whether or not such dollar amount was applicable for premiums for any prior month) which shall be applicable for premiums for months occurring in the following calendar[2] year. Such amount shall be equal to $33, multiplied by the ratio of (A) the inpatient hospital deductible for that following calendar[3] year, as promulgated under section 1813(b)(2), to (B) such deductible promulgated for 1973. Any amount determined under the preceding sentence which is not a multiple of $1 shall be rounded to the nearest multiple of $1, or if midway between multiples of $1 to the next higher multiple of $1.

(e) Payment of the monthly premiums on behalf of any individual who meets the conditions of subsection (a) may be made by any public or private agency or organization under a contract or other arrangement entered into between it and the Secretary if the Secretary determines that payment of such premiums under such contract or arrangement is administratively feasible.

(f) Amounts paid to the Secretary for coverage under this section shall be deposited in the Treasury to the credit of the Federal Hospital Insurance Trust Fund.

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[1] P.L. 98-21, §606(b)(1), struck out "last calendar quarter of each year, beginning in 1973," and substituted "next to last calendar quarter of each year". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2] P.L. 98-21, §606(b)(2), struck out "12-month period commencing July 1 of the next" and substituted "following calendar". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[3] P.L. 98-21, §606(b)(3), struck out "such next" and substituted "that following calendar". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

ESTABLISHMENT OF SUPPLEMENTARY MEDICAL INSURANCE PROGRAM FOR THE AGED AND THE DISABLED

SEC. 1831. [42 U.S.C. 1395j] There is hereby established a voluntary insurance program to provide medical insurance benefits in accordance with the provisions of this part for aged and disabled individuals who elect to enroll under such program, to be financed from premium payments by enrollees together with contributions from funds appropriated by the Federal Government.

SCOPE OF BENEFITS

SEC. 1832. [42 U.S.C. 1395k] (a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2); and

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

(A) home health services[1];

(B) medical and other health services furnished by a provider of services or by others under arrangement with them made by a provider of services, excluding—

(i) physician services except where furnished by—

(I) a resident or intern of a hospital, or

(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital) where the conditions specified in paragraph (7) of such section are met, and

(ii) services for which payment may be made pursuant to section 1835(b)(2); and

(C) outpatient physical therapy services, other than services to which the next to last sentence of section 1861(p) applies;

(D) rural health clinic services;

(E) comprehensive outpatient rehabilitation facility services; and[2]

(F) facility services furnished in connection with surgical procedures specified by the Secretary—

(i) pursuant to section 1833(i)(1)(A) and performed in an ambulatory surgical center (which meets health, safety, and other standards specified by the Secretary in regulations) if the center has an agreement in effect with the Secretary by which the center agrees to accept

[1] P.L. 96-499, §930(g), struck out "for up to 100 visits during a calendar year", effective with respect to services furnished on or after July 1, 1981.

[2] P.L. 96-499, §933(a), added subparagraph (E), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

the amount determined under section 1833(i)(2)(A) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all such services furnished by the center to individuals enrolled under this part, or

(ii) pursuant to section 1833(i)(1)(B) and performed by a physician, described in section 1861(r)(1), in his office, if the Secretary has determined that—

(I) a quality control and peer review organization (having a contract with the Secretary[1] under part B of title XI of this Act) is willing, able, and has agreed to carry out a review (on a sample or other reasonable basis) of the physician's performing such procedures in the physician's office,

(II) the particular physician involved has agreed to make available to such Organization[2] such records as the Secretary determines to be necessary to carry out the review, and

(III) the physician is authorized to perform the procedure in a hospital located in the area in which the office is located,

and if the physician agrees to accept the amount determined under section 1833(i)(2)(B) as full payment for such services and to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with such surgical procedure to individuals enrolled under this part.

(b) For definitions of "spell of illness", "medical and other health services", and other terms used in this part, see section 1861.

PAYMENT OF BENEFITS[3]

SEC. 1833. [42 U.S.C. 1395l] (a) Except as provided in section 1876, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1832(a)(1)—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80

[1] P.L. 97-248, §148(c), struck out "Professional Standards Review Organization (designated, conditionally or otherwise," and substituted "quality control and peer review organization (having a contract with the Secretary", effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[2] As in original. Should be "organization".

[3] See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §932(b), with respect to the Secretary's report to Congress on preadmission diagnostic testing.

percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b), (B) with respect to items and services described in section 1861(s)(10), the amounts paid shall be 100 percent of the reasonable charges for such items and services,[1] (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1862(a)(4), the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (h) of this section);[2] (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1881, (F) with respect to expenses incurred for physicians' services (furnished by a physician who has an agreement in effect with the Secretary by which the physician agrees to accept an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for all physicians' services which are preadmission diagnostic services furnished by the physician to individuals enrolled under this part) which are preadmission diagnostic services for which payment may be made under this part and which are furnished (i) in the outpatient department of a hospital within seven days of such individual's admission to the same hospital as an inpatient or, to the extent practicable as determined by regulations prescribed by the Secretary, to another hospital, or (ii) to the extent practicable as determined by regulations prescribed by the Secretary, in a physician's office within seven days of such individual's admission to a hospital as an inpatient, the amounts paid shall be equal to the reasonable charges for such services, and (G) with respect to expenses incurred for services described in subsection (i)(3) under the conditions specified in such subsection, the amounts paid shall be the reasonable charge for such services, and [(H) Stricken.[3]]

(2) in the case of services described in section 1832(a)(2) (except those services described in subparagraphs (D), (E), and (F) of such section and in paragraph (5) of this subsection and unless otherwise specified in section 1881)—

(A) with respect to home health services and to items and services described in section 1861(s)(10)[4], the lesser of—

(i) the reasonable cost of such services, as determined under section 1861(v), or

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[1]P.L. 97-248, §112(a)(1), amended subparagraph (B) in its entirety, effective with respect to items and services furnished on or after October 1, 1982.

[2]P.L. 95-292, §4(b), added subparagraph (E) after "section),". The amendment was executed as if P.L. 95-292, §4(b), reads "section);" instead of "section),". Possibly the semicolon should be a comma.

[3]P.L. 96-611, §1(b)(1)(B), added subparagraph (H), effective with respect to services furnished on or after July 1, 1981.

P.L. 97-248, §112(a)(3), struck out subparagraph (H), effective with respect to items and services furnished on or after October 1, 1982.

[4]P.L. 96-611, §1(b)(1)(C), inserted "and to items and services described in section 1861(s)(10)", effective with respect to services furnished on or after July 1, 1981.

(ii) the customary charges with respect to such services,

or, if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1814(b)(2);[1]

(B) with respect to other services (except those described in subparagraph (C) of this paragraph and except as may be provided in section 1886[2])—

(i) the lesser of—

(I) the reasonable cost of such services, as determined under section 1861(v), or

(II) the customary charges with respect to such services,

less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such other services exceed 80 percent of such reasonable cost, or

(ii) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, 80 percent of the amount determined in accordance with section 1814(b)(2), or

(iii) if (and for so long as) the conditions described in section 1814(b)(3) are met, the amounts determined under the reimbursement system described in such section; and[3]

(C) with respect to services described in the second sentence of section 1861(p), 80 percent of the reasonable charges for such services;

(3) in the case of services described in subparagraphs (D) and (E) of section 1832(a)(2), the costs which are reasonable and related to the cost of furnishing such services or which are based on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1861(v)(1)(A), less the amount a provider may charge as described in clause (ii) of section 1866(a)(2)(A), but in no case may the payment for such services (other than for items and services described in section 1861(s)(10))[4] exceed 80 percent of such costs;

(4) in the case of facility services described in subparagraph (F) of section 1832(a)(2), the applicable amount described in paragraph (2) of section 1833(i); and

(5) in the case of preadmission diagnostic services described in section 1861(s)(2)(C) which are furnished to an individual by the outpatient department of a hospital within 7 days of such individual's admission to the same hospital as an inpatient or (to the extent practicable as determined by regulations prescribed by the Secretary) to another hospital, the reasonable costs for such services.

(b) Before applying subsection (a) with respect to expenses incurred by an individual during any calendar year, the total amount of the expenses incurred by such individual during such year (which would, except for this subsection, constitute incurred expenses from which

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[1]P.L. 97-35, §2106(a), amended subparagraph (A) in its entirety, effective December 5, 1980.

[2]P.L. 97-248, §101(c)(2), inserted "and except as may be provided in section 1886", effective September 3, 1982.

[3]P.L. 97-35, §2106(a), amended subparagraph (B) in its entirety, effective December 5, 1980.

[4]P.L. 96-611, §1(b)(1)(D), inserted "(other than for items and services described in section 1861(s)(10))", effective with respect to services furnished on or after July 1, 1981.

benefits payable under subsection (a) are determinable) shall be reduced by a deductible of $75[1]; except that (1) such total amount shall not include expenses incurred for items and services described in section 1861(s)(10),[2] (2)[3] such deductible shall not apply with respect to home health services[4], and (3)[5] such total amount shall not include expenses incurred for services the amount of payment for which is determined under subsection (a)(1)(G) or under subsection (i)(2) or (i)(4). The total amount of the expenses incurred by an individual as determined under the preceding sentence shall, after the reduction specified in such sentence, be further reduced by an amount equal to the expenses incurred for the first three pints of whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished to the individual during the calendar year, except that such deductible for such blood shall in accordance with regulations be appropriately reduced to the extent that there has been a replacement of such blood (or equivalent quantities of packed red blood cells, as so defined); and for such purposes blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual shall be deemed replaced when the institution or other person furnishing such blood (or such equivalent quantities of packed red blood cells, as so defined) is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is made under this sentence.

(c) Notwithstanding any other provision of this part, with respect to expenses incurred in any calendar year in connection with the treatment of mental, psychoneurotic, and personality disorders of an individual who is not an inpatient of a hospital at the time such expenses are incurred, there shall be considered as incurred expenses for purposes of subsections (a) and (b) only whichever of the following amounts is the smaller:

(1) $312.50, or

(2) 62½ percent of such expenses.

(d) No payment may be made under this part with respect to any services furnished an individual to the extent that such individual is entitled (or would be entitled except for section 1813) to have payment made with respect to such services under part A.

(e) No payment shall be made to any provider of services or other person under this part unless there has been furnished such information as may be necessary in order to determine the amounts due such provider or other person under this part for the period with respect to which the amounts are being paid or for any prior period.

(f)(1) In the case of durable medical equipment to be furnished an individual as described in section 1861(s)(6), the Secretary shall determine, on the basis of such medical and other evidence as he

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[1]P.L. 97-35, §2134(a), struck out "60" and substituted "75", effective January 1, 1982, and shall apply to the deductible for calendar years beginning with 1982.

[2]P.L. 97-35, §2133(a), struck out the text of paragraph (1) and "(2)", first effective with respect to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981. P.L. 97-248, §112(b), amended paragraph (1) in its entirety, effective with respect to items and services furnished on or after October 1, 1982.

[3]P.L. 97-35, §2133(a), redesignated paragraph (3) as paragraph (2), first effective with respect to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.

[4]P.L. 96-499, §930(h)(2), added this paragraph as paragraph (3), effective with respect to services furnished on or after July 1, 1981.

[5]P.L. 97-35, §2133(a), redesignated paragraph (4) as paragraph (3), first effective with respect to the deductible for calendar year 1982 with respect to expenses incurred on or after October 1, 1981.

finds appropriate (including certification by the attending physician with respect to expected duration of need), whether the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly or more practical than rental. If the Secretary determines that such a presumption does exist, he shall require that the equipment be purchased, on a lease-purchase basis or otherwise, and shall make payment in accordance with the lease-purchase agreement (or in a lump sum amount if the equipment is purchased other than on a lease-purchase basis); except that the Secretary may authorize the rental of the equipment notwithstanding such determination if he determines that the purchase of the equipment would be inconsistent with the purposes of this title or would create an undue financial hardship on the individual who will use it.

(2) With respect to purchases of used durable medical equipment, the Secretary may waive the 20 percent coinsurance amount applicable under subsection (a) whenever the purchase price of the used equipment is at least 25 percent less than the reasonable charge for comparable new equipment.

(3) For purposes of paragraph (1), the Secretary may, pursuant to agreements made with suppliers of durable medical equipment, establish reimbursement procedures which he finds to be equitable, economical, and feasible.

(4) The Secretary shall encourage suppliers of durable medical equipment to make their equipment available to individuals entitled to benefits under this title on a lease-purchase basis whenever possible.

(g) In the case of services described in the next to last sentence of section 1861(p), with respect to expenses incurred in any calendar year, no more than $500[1] shall be considered as incurred expenses for purposes of subsections (a) and (b).

(h) With respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the Secretary is authorized to establish a payment rate which is acceptable to the laboratory and which would be considered the full charge for such tests. Such negotiated rate shall be limited to an amount not in excess of the total payment that would have been made for the services in the absence of such a rate.

(i)(1) The Secretary shall, in consultation with[2] appropriate medical organizations—

(A) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in an ambulatory surgical center (meeting the standards specified under section 1832(a)(2)(F)(i)) or hospital outpatient department, and

(B) specify those surgical procedures which are appropriately (when considered in terms of the proper utilization of hospital

[1] P.L. 96-499, §935(a), struck out "$100" and substituted "$500", effective with respect to expenses incurred in calendar years beginning with calendar year 1982.

[2] P.L. 97-248, §148(d), struck out "the National Professional Standards Review Council and", effective, subject to P.L. 97-248, §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

inpatient facilities) performed on an inpatient basis in a hospital but which also can be performed safely on an ambulatory basis in a physician's office.

(2)(A) The amount of payment to be made for facility services furnished in connection with a surgical procedure specified pursuant to paragraph (1)(A) and furnished to an individual in an ambulatory surgical center described in such paragraph shall be equal to a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account the costs incurred by such centers, or classes of centers, generally in providing services furnished in connection with the performance of such procedure, and

(ii) takes such costs into account in such a manner as will assure that the performance of the procedure in such a center will result in substantially less amounts paid under this title than would have been paid if the procedure had been performed on an inpatient basis in a hospital.

Each amount so established shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(B) The amount of payment to be made under this part for facility services furnished, in connection with a surgical procedure specified pursuant to paragraph (1)(B), in a physician's office shall be equal to a standard overhead amount established by the Secretary (with respect to each such procedure) on the basis of the Secretary's estimate of a fair fee which—

(i) takes into account additional costs, not usually included in the professional fee, incurred by physicians in securing, maintaining, and staffing the facilities and ancillary services appropriate for the performance of such procedure in the physician's office, and

(ii) takes such items into account in such a manner which will assure that the performance of such procedure in the physician's office will result in substantially less amounts paid under this title than would have been paid if the services had been furnished on an inpatient basis in a hospital.

Each amount so established shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(3) In the case of services (including all pre- and post-operative services) described in paragraphs (1) and (2)(A) of section 1861(s) and furnished in connection with surgical procedures (specified pursuant to paragraph (1) of this subsection) in a physician's office, an ambulatory surgical center described in such paragraph, or a hospital outpatient department, payment for such services shall be determined in accordance with subsection (a)(1)(G) if the physician accepts an assignment described in section 1842(b)(3)(B)(ii) with respect to payment for such services.

(4)(A) The Secretary is authorized to provide by regulations that in the case of a surgical procedure, specified by the Secretary pursuant to paragraph (1)(A), performed in an ambulatory surgical center described in such paragraph, there shall be paid (in lieu of any amounts otherwise payable under this part) with respect to the

facility services furnished by such center and with respect to all related services (including physicians' services, laboratory, X-ray, and diagnostic services) a single all-inclusive fee established pursuant to subparagraph (B), if all parties furnishing all such services agree to accept such fee (to be divided among the parties involved in such manner as they shall have previously agreed upon) as full payment for the services furnished.

(B) In implementing this paragraph, the Secretary shall establish with respect to each surgical procedure specified pursuant to paragraph (1)(A) the amount of the all-inclusive fee for such procedure, taking into account such factors as may be appropriate. The amount so established with respect to any surgical procedure shall be reviewed periodically and may be adjusted by the Secretary, when appropriate, to take account of varying conditions in different areas.

(j) Whenever a final determination is made that the amount of payment made under this part either to a provider of services or to another person pursuant to an assignment under section 1842(b)(3)(B)(ii) was in excess of or less than the amount of payment that is due, and payment of such excess or deficit is not made (or effected by offset) within 30 days of the date of the determination, interest shall accrue on the balance of such excess or deficit not paid or offset (to the extent that the balance is owed by or owing to the provider) at a rate determined in accordance with the regulations of the Secretary of the Treasury applicable to charges for late payments.[1]

[SEC. 1834. Repealed.[2]]

PROCEDURE FOR PAYMENT OF CLAIMS OF PROVIDERS OF SERVICES

SEC. 1835. [42 U.S.C. 1395n] (a) Except as provided in subsections (b), (c), and (e), payment for services described in section 1832(a)(2) furnished an individual may be made only to providers of services which are eligible therefor under section 1866(a), and only if—

(1) written request, signed by such individual, except in cases in which the Secretary finds it impracticable for the individual to do so, is filed for such payment in such form, in such manner and by such person or persons as the Secretary may by regulation prescribe, no later than the close of the period of 3 calendar years following the year in which such services are furnished (deeming any services furnished in the last 3 calendar months of any calendar year to have been furnished in the succeeding calendar year) except that, where the Secretary deems that efficient administration so requires, such period may be reduced to not less than 1 calendar year; and

(2) a physician certifies (and recertifies, where such services are furnished over a period of time, in such cases, with such frequency, and accompanied by such supporting material, appropriate to the case involved, as may be provided by regulations) that—

(A) in the case of home health services (i) such services are or were required because the individual is or was confined to

[1] P.L. 97-248, §117(a)(2), added this subsection, effective with respect to final determinations made on or after September 3, 1982.

[2] P.L. 96-499, §930(i), [94 Stat. 2631], repealed §1834, effective with respect to services furnished on or after July 1, 1981.

his home (except when receiving items and services referred to in section 1861(m)(7)) and needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy[1], (ii) a plan for furnishing such services to such individual has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician;

(B) in the case of medical and other health services except services described in subparagraphs (B), (C), and (D) of section 1861(s)(2), such services are or were medically required; and[2]

(C) in the case of outpatient physical therapy services, (i) such services are or were required because the individual needed physical therapy services, (ii) a plan for furnishing such services has been established, and is periodically reviewed, by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and[3]

(D) in the case of outpatient speech pathology services, (i) such services are or were required because the individual needed speech pathology services, (ii) a plan for furnishing such services has been established by a physician or by the speech pathologist providing such services and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician; and[4]

(E) in the case of comprehensive outpatient rehabilitation facility services, (i) such services are or were required because the individual needed skilled rehabilitation services, (ii) a plan for furnishing such services has been established and is periodically reviewed by a physician, and (iii) such services are or were furnished while the individual is or was under the care of a physician.[5]

For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

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[1]P.L. 97-35, §2122(a)(1), struck out "needed skilled nursing care on an intermittent basis, or physical, occupational, or speech therapy" and substituted "needs or needed skilled nursing care on an intermittent basis or physical or speech therapy or, in the case of an individual who has been furnished home health services based on such a need and who no longer has such a need for such care or therapy, continues or continued to need occupational therapy", effective with respect to services furnished pursuant to plans of treatment implemented after November 1981.

[2]As in original. There need be no "and" at the end of subparagraph (B).

[3]As in original. There need be no "and" at the end of subparagraph (C).

[4]P.L. 97-35, §2106(b)(1)(A), added "and", effective August 13, 1981.

[5]P.L. 96-499, §933(b), added subparagraph (E), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

P.L. 97-35, §2106(b)(1)(B), struck out "; and" and substituted a period, effective August 13, 1981.

To the extent provided by regulations, the certification and recertification requirements of paragraph (2) shall be deemed satisfied where, at a later date, a physician makes a certification of the kind provided in subparagraph (A) or (B) of paragraph (2) (whichever would have applied), but only where such certification is accompanied by such medical and other evidence as may be required by such regulations. With respect to the physician certification required by paragraph (2) for home health services furnished to any individual by a home health agency (other than an agency which is a governmental entity) and with respect to the establishment and review of a plan for such services, the Secretary shall prescribe regulations which shall become effective no later than July 1, 1981, and which prohibit a physician who has a significant ownership interest in, or a significant financial or contractural[1] relationship with, such home health agency from performing such certification and from establishing or reviewing such plan.[2]

(b)(1) Payment may also be made to any hospital for services described in section 1861(s) furnished as an outpatient service by a hospital or by others under arrangements made by it to an individual entitled to benefits under this part even though such hospital does not have an agreement in effect under this title if (A) such services were emergency services, (B) the Secretary would be required to make such payment if the hospital had such an agreement in effect and otherwise met the conditions of payment hereunder, and (C) such hospital has made an election pursuant to section 1814(d)(1)(C) with respect to the calendar year in which such emergency services are provided. Such payments shall be made only in the amounts provided under section 1833(a)(2) and then only if such hospital agrees to comply, with respect to the emergency services provided, with the provisions of section 1866(a).

(2) Payment may also be made on the basis of an itemized bill to an individual for services described in paragraph (1) of this subsection if (A) payment cannot be made under such paragraph (1) solely because the hospital does not elect, in accordance with section 1814(d)(1)(C), to claim such payments and (B) such individual files application (submitted within such time and in such form and manner, and containing and supported by such information as the Secretary shall by regulations prescribe) for reimbursement. The amounts payable under this paragraph shall, subject to the provisions of section 1833, be equal to 80 percent of the hospital's reasonable charges for such services.

(c) Notwithstanding the provisions of this section and sections 1832, 1833, and 1866(a)(1)(A), a hospital may, subject to such limitations as may be prescribed by regulations, collect from an individual the customary charges for services specified in section 1861(s) and furnished to him by such hospital as an outpatient, but only if such charges for such services do not exceed the applicable supplementary medical insurance deductible, and such customary charges shall be regarded as expenses incurred by such individual with respect to which benefits are payable in accordance with section 1833(a)(1). Payments under this title to hospitals which have elected to make

[1] As in original. Should be "contractual".

[2] P.L. 96-499, §930(e), added the preceding sentence, effective with respect to services furnished on or after July 1, 1981.

collections from individuals in accordance with the preceding sentence shall be adjusted periodically to place the hospital in the same position it would have been had it instead been reimbursed in accordance with section 1833(a)(2).

(d) Subject to section 1880, no payment may be made under this part to any Federal provider of services or other Federal agency, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services or other person for any item or service which such provider or person is obligated by a law of, or a contract with, the United States to render at public expense.

(e) For purposes of services (1) which are inpatient hospital services by reason of paragraph (7) of section 1861(b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i), and (2) for which the reasonable cost thereof is determined under section 1861(v)(1)(D) (or would be if section 1886 did not apply)[1], payment under this part shall be made to such fund as may be designated by the organized medical staff of the hospital in which such services were furnished or, if such services were furnished in such hospital by the faculty of a medical school, to such fund as may be designated by such faculty, but only if—

(1)[2] such hospital has an agreement with the Secretary under section 1866, and

(2)[3] the Secretary has received written assurances that[4] such payment will be used by such fund solely for the improvement of care to patients in such hospital or for educational or charitable purposes and (B)[5] the individuals who were furnished such services or any other persons will not be charged for such services (or if charged provision will be made for return for[6] any moneys incorrectly collected).

ELIGIBLE INDIVIDUALS[7]

SEC. 1836. [42 U.S.C. 1395o] Every individual who—

(1) is entitled to hospital insurance benefits under part A, or

(2) has attained age 65 and is a resident of the United States, and is either (A) a citizen or (B) an alien lawfully admitted for permanent residence who has resided in the United States continuously during the 5 years immediately preceding the month in which he applies for enrollment under this part,

is eligible to enroll in the insurance program established by this part.

ENROLLMENT PERIODS

SEC. 1837. [42 U.S.C. 1395p] (a) An individual may enroll in the insurance program established by this part only in such manner and

[1] P.L. 98-21, §602(b), inserted "(or would be if section 1886 did not apply)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2] As in original; second paragraph (1).

[3] As in original; second paragraph (2).

[4] As in original. Should insert "(A)" or strike out "(B)".

[5] As in original. Should insert "(A)" or strike out "(B)".

[6] As in original. Should be "of".

[7] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §125, with respect to special enrollment provisions for merchant seamen.

form as may be prescribed by regulations, and only during an enrollment period prescribed in or under this section.

[(b) Repealed.[1]]

(c) In the case of individuals who first satisfy paragraph (1) or (2) of section 1836 before March 1, 1966, the initial general enrollment period shall begin on the first day of the second month[2] which begins after the date of enactment of this title[3] and shall end on May 31, 1966. For purposes of this subsection and subsection (d), an individual who has attained age 65 and who satisfies paragraph (1) of section 1836 but not paragraph (2) of such section shall be treated as satisfying such paragraph (1) on the first day on which he is (or on filing application would have been) entitled to hospital insurance benefits under part A.

(d) In the case of an individual who first satisfies paragraph (1) or (2) of section 1836 on or after March 1, 1966, his initial enrollment period shall begin on the first day of the third month before the month in which he first satisfies such paragraphs and shall end seven months later. Where the Secretary finds that an individual who has attained age 65 failed to enroll under this part during his initial enrollment period (based on a determination by the Secretary of the month in which such individual attained age 65), because such individual (relying on documentary evidence) was mistaken as to his correct date of birth, the Secretary shall establish for such individual an initial enrollment period based on his attaining age 65 at the time shown in such documentary evidence (with a coverage period determined under section 1838 as though he had attained such age at that time).

(e) There shall be a general enrollment period during the period beginning on January 1 and ending on March 31 of each year.[4]

(f) Any individual—

(1) who is eligible under section 1836 to enroll in the medical insurance program by reason of entitlement to hospital insurance benefits as described in paragraph (1) of such section, and

(2) whose initial enrollment period under subsection (d) begins after March 31, 1973, and

(3) who is residing in the United States, exclusive of Puerto Rico,

shall be deemed to have enrolled in the medical insurance program established by this part.

(g) All of the provisions of this section shall apply to individuals satisfying subsection (f), except that—

(1) in the case of an individual who satisfies subsection (f) by reason of entitlement to disability insurance benefits described in section 226(a)(2)(B), his initial enrollment period shall begin on the first day of the later of (A) April 1973 or (B) the third month before the 25th month of such entitlement, and shall reoccur with each continuous period of eligibility (as defined in section 1839(e)) and upon attainment of age 65;

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[1] P.L. 96-499, §945(a), [94 Stat. 2642], repealed subsection (b), effective with respect to enrollments occurring on or after April 1, 1981.

[2] September 1, 1965; July 30, 1965, is the date of enactment of P.L. 89-97 (79 Stat. 286) which added title XVIII to the Act.

[3] September 1, 1965; July 30, 1965, is the date of enactment of P.L. 89-97 (79 Stat. 286) which added title XVIII to the Act.

[4] P.L. 97-35, §2151(a)(1), amended subsection (e) in its entirety, effective with respect to enrollments pursuant to written requests for enrollment filed on or after October 1, 1981.

(2)(A) in the case of an individual who is entitled to monthly benefits under section 202 or 223 on the first day of his initial enrollment period or becomes entitled to monthly benefits under section 202 during the first 3 months of such period, his enrollment shall be deemed to have occurred in the third month of his initial enrollment period, and

(B) in the case of an individual who is not entitled to benefits under section 202 on the first day of his initial enrollment period and does not become so entitled during the first 3 months of such period, his enrollment shall be deemed to have occurred in the month in which he files the application establishing his entitlement to hospital insurance benefits provided such filing occurs during the last 4 months of his initial enrollment period; and

(3) in the case of an individual who would otherwise satisfy subsection (f) but does not establish his entitlement to hospital insurance benefits until after the last day of his initial enrollment period (as defined in subsection (d) of this section), his enrollment shall be deemed to have occurred on the first day of the earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)[1].

(h) In any case where the Secretary finds that an individual's enrollment or nonenrollment in the insurance program established by this part or part A pursuant to section 1818 is unintentional, inadvertent, or erroneous and is the result of the error, misrepresentation, or inaction of an officer, employee, or agent of the Federal Government, or its instrumentalities, the Secretary may take such action (including the designation for such individual of a special initial or subsequent enrollment period, with a coverage period determined on the basis thereof and with appropriate adjustments of premiums) as may be necessary to correct or eliminate the effects of such error, misrepresentation, or inaction.

COVERAGE PERIOD[2]

SEC. 1838. [42 U.S.C. 1395q] (a) The period during which an individual is entitled to benefits under the insurance program established by this part (hereinafter referred to as his "coverage period") shall begin on whichever of the following is the latest:

(1) July 1, 1966[3] or (in the case of a disabled individual who has not attained age 65) July 1, 1973; or

(2)(A) in the case of an individual who enrolls pursuant to subsection (d) of section 1837 before the month in which he first satisfies paragraph (1) or (2) of section 1836, the first day of such month, or

(B) in the case of an individual who enrolls pursuant to such subsection (d) in the month in which he first satisfies such paragraph, the first day of the month following the month in which he so enrolls, or

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[1] P.L. 97-35, §2151(a)(2), struck out "month in which the individual files an application establishing such entitlement" and substituted "earlier of the then current or immediately succeeding general enrollment period (as defined in subsection (e) of this section)", effective with respect to enrollments pursuant to written requests for enrollment filed on or after October 1, 1981.

[2] See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §947(e), with respect to shortened part B termination period for individuals whose premiums medicaid has ceased to pay.

[3] As in original. Should be comma after "1966".

(C) in the case of an individual who enrolls pursuant to such subsection (d) in the month following the month in which he first satisfies such paragraph, the first day of the second month following the month in which he so enrolls, or

(D) in the case of an individual who enrolls pursuant to such subsection (d) more than one month following the month in which he satisfies such paragraph, the first day of the third month following the month in which he so enrolls, or

(E) in the case of an individual who enrolls pursuant to subsection (e) of section 1837, the July 1[1] following the month in which he so enrolls; or

(3)(A) in the case of an individual who is deemed to have enrolled on or before the last day of the third month of his initial enrollment period, the first day of the month in which he first meets the applicable requirements of section 1836 or July 1, 1973, whichever is later, or

(B) in the case of an individual who is deemed to have enrolled on or after the first day of the fourth month of his initial enrollment period, as prescribed under subparagraphs (B), (C), (D), and (E) of paragraph (2) of this subsection.

(b) An individual's coverage period shall continue until his enrollment has been terminated—

(1) by the filing of notice that the individual no longer wishes to participate in the insurance program established by this part, or

(2) for nonpayment of premiums.

The termination of a coverage period under paragraph (1) shall (except as otherwise provided in section 1843(e))[2] take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed. The termination of a coverage period under paragraph (2) shall take effect on a date determined under regulations, which may be determined so as to provide a grace period in which overdue premiums may be paid and coverage continued. The grace period determined under the preceding sentence shall not exceed 90 days; except that it may be extended to not to exceed 180 days in any case where the Secretary determines that there was good cause for failure to pay the overdue premiums within such 90-day period.

Where an individual who is deemed to have enrolled for medical insurance pursuant to section 1837(f) files a notice before the first day of the month in which his coverage period begins advising that he does not wish to be so enrolled, the termination of the coverage period resulting from such deemed enrollment shall take effect with the first day of the month the coverage would have been effective[3]. Where an individual who is deemed enrolled for medical insurance benefits pursuant to section 1837(f) files a notice requesting termination of his deemed coverage in or after the month in which such coverage becomes effective, the termination of such coverage shall

[1] P.L. 97-35, §2151(a)(3), struck out "first day of the third month" and substituted "July 1", effective with respect to enrollments pursuant to written requests for enrollment filed on or after October 1, 1981.

[2] P.L. 96-499, §947(b), added "(except as otherwise provided in section 1843(e))", effective with respect to notices filed after March 1981.

[3] P.L. 97-35, §2106(b)(2), struck out "and such notice shall not be considered a disenrollment for the purposes of section 1837(b)" [from the paragraph after subsection (b)], effective April 1, 1981.

take effect at the close of the calendar quarter following the calendar quarter in which the notice is filed.

(c) In the case of an individual satisfying paragraph (1) of section 1836 whose entitlement to hospital insurance benefits under part A is based on a disability rather than on his having attained the age of 65, his coverage period (and his enrollment under this part) shall be terminated as of the close of the last month for which he is entitled to hospital insurance benefits.

(d) No payments may be made under this part with respect to the expenses of an individual unless such expenses were incurred by such individual during a period which, with respect to him, is a coverage period.

AMOUNTS OF PREMIUMS

SEC. 1839. [42 U.S.C. 1395r] (a)(1) The Secretary shall, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for enrollees age 65 and over which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to those enrollees age 65 and older will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate, the Secretary shall include an appropriate amount for a contingency margin.

(2) The monthly premium of each individual enrolled under this part for each month after December 1983 shall, except as provided in subsections (b) and (e), be the amount determined under paragraph (3).

(3) The Secretary shall, during September of 1983 and of each year thereafter, determine and promulgate the monthly premium applicable for individuals enrolled under this part for the succeeding calendar year. The monthly premium shall (except as otherwise provided in subsection (e)) be equal to the smaller of—

(A) the monthly actuarial rate for enrollees age 65 and over, determined according to paragraph (1) of this subsection, for that calendar year, or

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 215(a)(1), based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on November 1 of the year before the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals for the following November 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement

setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and older as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

(4) The Secretary shall also, during September of 1983 and of each year thereafter, determine the monthly actuarial rate for disabled enrollees under age 65 which shall be applicable for the succeeding calendar year. Such actuarial rate shall be the amount the Secretary estimates to be necessary so that the aggregate amount for such calendar year with respect to disabled enrollees under age 65 which will equal one-half of the total of the benefits and administrative costs which he estimates will be payable from the Federal Supplementary Medical Insurance Trust Fund for services performed and related administrative costs incurred in such calendar year with respect to such enrollees. In calculating the monthly actuarial rate under this paragraph, the Secretary shall include an appropriate amount for a contingency margin.[1]

(b)[2] In the case of an individual whose coverage period began pursuant to an enrollment after his initial enrollment period (determined pursuant to subsection (c) or (d) of section 1837), the monthly premium determined under subsection (a) or (e)[3] shall be increased by 10 percent of the monthly premium so determined for each full 12 months (in the same continuous period of eligibility) in which he could have been but was not enrolled. For purposes of the preceding sentence, there shall be taken into account (1) the months which elapsed between the close of his initial enrollment period and the close of the enrollment period in which he enrolled, plus (in the case of an individual who reenrolls)[4] (2) the months which elapsed between the date of termination of a previous coverage period and the close of the enrollment period[5] in which he reenrolled[6]. Any increase in an individual's monthly premium under the first sentence of this subsection with respect to a particular continuous period of eligibility shall not be applicable with respect to any other continuous period of eligibility which such individual may have.[7]

(c)[8] If any monthly premium determined under the foregoing provisions of this section is not a multiple of 10 cents, such premium shall be rounded to the nearest multiple of 10 cents.

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[1]P.L. 98-21, §606(a)(1), amended subsection (a) in its entirety and struck out subsection (b) and subsection (c) [as amended by P.L. 97-248, §124(a)(1) and (a)(2), effective September 3, 1982]. For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2]P.L. 98-21, §606(a)(2), redesignated subsection (d) as subsection (b). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[3]P.L. 97-448, §309(b)(8), struck out "(b) or (c)" and substituted "(b), (c), or (g)", effective September 3, 1982, as if it had been included originally in P.L. 97-248.

P.L. 98-21, §606(a)(3)(A), struck out "(b), (c), or (g)" and substituted "(a) or (e)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[4]As in original. Punctuation omitted.

[5]P.L. 97-35, §2151(a)(4), struck out "the month after the month" and substitued "the close of the enrollment period", effective with respect to enrollments pursuant to written requests for enrollment filed on or after October 1, 1981.

[6]P.L. 96-499, §945(c)(2), struck out "enrolls for a second time) (2) the months which elapsed between the date of the termination of his first coverage period and the close of the enrollment period in which he enrolled for the second time" and substituted "reenrolls) (2) the months which elapsed between the date of termination of a previous coverage period and the month after the month in which he reenrolled", effective with respect to enrollments occurring on or after April 1, 1981.

[7]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §125, with respect to special enrollment provisions for merchant seamen.

[8]P.L. 98-21, §606(a)(2), redesignated subsection (e) as subsection (c). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

(d)[1] For purposes of subsection (b)[2] (and section 1837(g)(1)), an individual's "continuous period of eligibility" is the period beginning with the first day on which he is eligible to enroll under section 1836 and ending with his death; except that any period during all of which an individual satisfied paragraph (1) of section 1836 and which terminated in or before the month preceding the month in which he attained age 65 shall be a separate "continuous period of eligibiiity" with respect to such individual (and each such period which terminates shall be deemed not to have existed for purposes of subsequently applying this section).

(e)[3](1) Notwithstanding the provisions of subsection (a)[4], the monthly premium for each individual enrolled under this part for each month after December[5] 1983 and prior to January 1986[6] shall be an amount equal to 50 percent of the monthly actuarial rate for enrollees age 65 and over, as determined under subsection (a)(1)[7] and applicable to such month.

(2) Any increases in premium amounts taking effect prior to January 1986[8] by reason of paragraph (1) shall be taken into account for purposes of determining increases thereafter under subsection (a)(3)[9]. [10]

PAYMENT OF PREMIUMS

SEC. 1840. [42 U.S.C. 1395s] (a)(1) In the case of an individual who is entitled to monthly benefits under section 202 or 223, his monthly premiums under this part shall (except as provided in subsections (b)(1) and (c)) be collected by deducting the amount thereof from the amount of such monthly benefits. Such deduction shall be made in such manner and at such times as the Secretary shall by regulation prescribe.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Federal Old-Age and Survivors Insurance Trust Fund or the Federal Disability Insurance Trust Fund to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates from benefits under section 202 or 223 which are payable from such Trust Fund. Such transfer shall be made on the basis of a certification by the Secretary of Health, Education, and Welfare and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

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[1] P.L. 98-21, §606(a)(2), redesignated subsection (f) as subsection (d). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2] P.L. 98-21, §606(a)(3)(B), struck out "(c)" and substituted "(b)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796. Executed as if §606(a)(3)(B) struck out "(d)" rather than "(c)" ["(d)" was substituted for "(c)" by P.L. 92-603, §203(d)(2); 86 Stat. 1377].

[3] P.L. 98-21, §606(a)(2), redesignated subsection (g) as subsection (e). For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[4] P.L. 98-21, §606(a)(3)(C)(i), struck out "(c)" and substituted "(a)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[5] P.L. 98-21, §606(a)(3)(C)(ii), struck out "June" and substituted "December". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[6] P.L. 98-21, §606(a)(3)(C)(iii), struck out "July 1985" and substituted "January 1986". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[7] P.L. 98-21, §606(a)(3)(C)(i), struck out "(c)(1)" and substituted "(a)(1)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[8] P.L. 98-21, §606(a)(3)(C)(iii), struck out "July 1985" and substituted "January 1986". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[9] P.L. 98-21, §606(a)(3)(C)(i), struck out "(c)(3)" and substituted "(a)(3)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[10] P.L. 97-248, §124(b), added this subsection [P.L. 98-21, §602(a)(2), redesignated this subsection (g) as subsection (e)], effective September 3, 1982.

(b)(1) In the case of an individual who is entitled to receive for a month an annuity under the Railroad Retirement Act of 1974[1] (whether or not such individual is also entitled for such month to a monthly insurance benefit under section 202), his monthly premiums under this part shall (except as provided in subsection (c)) be collected by deducting the amount thereof from such annuity or pension. Such deduction shall be made in such manner and at such times as the Secretary shall by regulations prescribe. Such regulations shall be prescribed only after consultation with the Railroad Retirement Board.

(2) The Secretary of the Treasury shall, from time to time, transfer from the Railroad Retirement Account to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such transfer relates. Such transfers shall be made on the basis of a certification by the Railroad Retirement Board and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(c) If an individual to whom subsection (a) or (b) applies estimates that the amount which will be available for deduction under such subsection for any premium payment period will be less than the amount of the monthly premiums for such period, he may (under regulations) pay to the Secretary such portion of the monthly premiums for such period as he desires.

(d)(1) In the case of an individual receiving an annuity under subchapter III of chapter 83 of title 5, United States Code, or any other law administered by the Civil Service Commission[2] providing retirement or survivorship protection, to whom neither subsection (a) nor subsection (b) applies, his monthly premiums under this part (and the monthly premiums of the spouse of such individual under this part if neither subsection (a) nor subsection (b) applies to such spouse and if such individual agrees) shall, upon notice from the Secretary of Health, Education, and Welfare to the Civil Service Commission, be collected by deducting the amount thereof from each installment of such annuity. Such deduction shall be made in such manner and at such times as the Civil Service Commission may determine. The Civil Service Commission shall furnish such information as the Secretary of Health, Education, and Welfare may reasonably request in order to carry out his functions under this part with respect to individuals to whom this subsection applies. A plan described in section 8903 of title 5, United States Code, may reimburse each annuitant enrolled in such plan an amount equal to the premiums paid by him under this part if such reimbursement is paid entirely from funds of such plan which are derived from sources other than the contributions described in section 8906 of such title.

(2) The Secretary of the Treasury shall, from time to time, but not less often than quarterly, transfer from the Civil Service Retirement and Disability Fund, or the account (if any) applicable in the case of such other law administered by the Civil Service Commission, to the Federal Supplementary Medical Insurance Trust Fund the aggregate amount deducted under paragraph (1) for the period to which such

[1] P.L. 75-162 [as amended by P.L. 93-445].

[2] Functions of the Civil Service Commission were transferred to the Director of the Office of Personnel Management under §102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note), effective January 1, 1979.

transfer relates. Such transfer shall be made on the basis of a certification by the Civil Service Commission and shall be appropriately adjusted to the extent that prior transfers were too great or too small.

(e) In the case of an individual who participates in the insurance program established by this part but with respect to whom none of the preceding provisions of this section applies, or with respect to whom subsection (c) applies, the premiums shall be paid to the Secretary at such times, and in such manner, as the Secretary shall by regulations prescribe.

(f) Amounts paid to the Secretary under subsection (c) or (e) shall be deposited in the Treasury to the credit of the Federal Supplementary Medical Insurance Trust Fund.

(g) In the case of an individual who participates in the insurance program established by this part, premiums shall be payable for the period commencing with the first month of his coverage period and ending with the month in which he dies or, if earlier, in which his coverage under such program terminates.

(h) In the case of an individual who is enrolled under the program established by this part as a member of a coverage group to which an agreement with a State entered into pursuant to section 1843 is applicable, subsections (a), (b), (c), and (d) of this section shall not apply to his monthly premium for any month in his coverage period which is determined under section 1843(d).

FEDERAL SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND

SEC. 1841. [42 U.S.C. 1395t] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the "Federal Supplementary Medical Insurance Trust Fund" (hereinafter in this section referred to as the "Trust Fund"). The Trust Fund shall consist of such gifts and bequests as may be made as provided in section 201(i)(1), and such amounts as may be deposited in, or appropriated to, such fund as provided in this part.

(b) With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate[1]. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

(1) Hold the Trust Fund;

[1]P.L. 98-21, §341(c)(1), struck out ", Education, and Welfare, all ex officio" and substituted "and Human Services, all ex officio, and of two members of the public (both of whom may not be from the same political party), who shall be nominated by the President for a term of four years and subject to confirmation by the Senate", effective April 20, 1983.

(2) Report to the Congress not later than the first day of April of each year on the operation and status of the Trust Fund during the preceding fiscal year and on its expected operation and status during the current fiscal year and the next 2 fiscal years;[1]

(3) Report immediately to the Congress whenever the Board is of the opinion that the amount of the Trust Fund is unduly small; and

(4) Review the general policies followed in managing the Trust Fund, and recommend changes in such policies, including necessary changes in the provisions of law which govern the way in which the Trust Fund is to be managed.

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall also include an actuarial opinion by the Chief Actuarial Officer of the Health Care Financing Administration certifying that the techniques and methodologies used are generally accepted within the actuarial profession and that the assumptions and cost estimates used are reasonable: *Provided,* That the certification shall not refer to economic assumptions underlying the Trustee's report.[2] Such report shall be printed as a House document of the session of the Congress to which the report is made. A person serving on the Board of Trustees shall not be considered to be a fiduciary and shall not be personally liable for actions taken in such capacity with respect to the Trust Fund.[3]

(c) It shall be the duty of the Managing Trustee to invest such portion of the Trust Fund as is not, in his judgment, required to meet current withdrawals. Such investments may be made only in interest-bearing obligations of the United States or in obligations guaranteed as to both principal and interest by the United States. For such purpose such obligations may be acquired (1) on original issue at the issue price, or (2) by purchase of outstanding obligations at the market price. The purposes for which obligations of the United States may be issued under the Second Liberty Bond Act[4], as amended, are hereby extended to authorize the issuance at par of public-debt obligations for purchase by the Trust Fund. Such obligations issued for purchase by the Trust Fund shall have maturities fixed with due regard for the needs of the Trust Fund and shall bear interest at a rate equal to the average market yield (computed by the Managing Trustee on the basis of market quotations as of the end of the calendar month next preceding the date of such issue) on all marketable interest-bearing obligations of the United States then forming a part of the public debt which are not due or callable until after the expiration of 4 years from the end of such calendar month;

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[1]See P.L. 98-21, "Social Security Amendments of 1983", §154(d), with respect to the due date of the annual report of the Boards of Trustees of the Trust Funds for 1983.

[2]P.L. 98-21, §154(c), added the preceding sentence, effective April 20, 1983.

[3]P.L. 98-21, §341(c)(2), added the preceding sentence, effective April 20, 1983.

[4]P.L. 97-258, §5(b) [96 Stat. 1068, 1072], repealed the Second Liberty Bond Act [P.L. 65-43; Act of September 24, 1917; Chapter 56; 40 Stat. 288]. Under P.L. 97-258, §4(b), references to the Second Liberty Bond Act are deemed to be references to corresponding provisions of Title 31 of the United States Code. See, instead, Chapter 31 of Title 31 of the U.S. Code.

except that where such average market yield is not a multiple of one-eighth of 1 per centum, the rate of interest on such obligations shall be the multiple of one-eighth of 1 per centum nearest such market yield. The Managing Trustee may purchase other interest-bearing obligations of the United States or obligations guaranteed as to both principal and interest by the United States, on original issue or at the market price, only where he determines that the purchase of such other obligations is in the public interest.

(d) Any obligations acquired by the Trust Fund (except public-debt obligations issued exclusively to the Trust Fund) may be sold by the Managing Trustee at the market price, and such public-debt obligations may be redeemed at par plus accrued interest.

(e) The interest on, and the proceeds from the sale or redemption of, any obligations held in the Trust Fund shall be credited to and form a part of the Trust Fund.

(f) There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Federal Old-Age and Survivors Insurance Trust Fund and from the Federal Disability Insurance Trust Fund amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments (other than amounts so certified to the Railroad Retirement Board) pursuant to section 1870(b) of this Act. There shall be transferred periodically (but not less often than once each fiscal year) to the Trust Fund from the Railroad Retirement Account amounts equivalent to the amounts not previously so transferred which the Secretary of Health, Education, and Welfare shall have certified as overpayments to the Railroad Retirement Board pursuant to section 1870(b) of this Act.

(g) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to make the payments provided for by this part, and the payments with respect to administrative expenses in accordance with section 201(g)(1).

(h) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Civil Service Commission in making deductions pursuant to section 1840(d). During each fiscal year, or after the close of such fiscal year, the Civil Service Commission shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

(i) The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Railroad Retirement Board for services performed pursuant to section 1840(b)(1) and section 1842(g). During each fiscal year or after the close of such fiscal year, the Railroad Retirement Board shall certify to the Secretary the amount of the costs it incurred in performing such services and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

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USE OF CARRIERS FOR ADMINISTRATION OF BENEFITS[1]

SEC. 1842. [42 U.S.C. 1395u] (a) In order to provide for the administration of the benefits under this part with maximum efficiency and convenience for individuals entitled to benefits under this part and for providers of services and other persons furnishing services to such individuals, and with a view to furthering coordination of the administration of the benefits under part A and under this part, the Secretary is authorized to enter into contracts with carriers, including carriers with which agreements under section 1816 are in effect, which will perform some or all of the following functions (or, to the extent provided in such contracts, will secure performance thereof by other organizations); and, with respect to any of the following functions which involve payments for physicians' services on a reasonable charge basis, the Secretary shall to the extent possible enter into such contracts:

(1)(A) make determinations of the rates and amounts of payments required pursuant to this part to be made to providers of services and other persons on a reasonable cost or reasonable charge basis (as may be applicable);

(B) receive, disburse, and account for funds in making such payments; and

(C) make such audits of the records of providers of services as may be necessary to assure that proper payments are made under this part;

(2)(A) determine compliance with the requirements of section 1861(k) as to utilization review; and

(B) assist providers of services and other persons who furnish services for which payment may be made under this part in the development of procedures relating to utilization practices, make studies of the effectiveness of such procedures and methods for their improvement, assist in the application of safeguards against unnecessary utilization of services furnished by providers of services and other persons to individuals entitled to benefits under this part, and provide procedures for and assist in arranging, where necessary, the establishment of groups outside hospitals (meeting the requirements of section 1861(k)(2)) to make reviews of utilization;

(3) serve as a channel of communication of information relating to the administration of this part; and

(4) otherwise assist, in such manner as the contract may provide, in discharging administrative duties necessary to carry out the purposes of this part.

(b)(1) Contracts with carriers under subsection (a) may be entered into without regard to section 3709 of the Revised Statutes or any other provision of law requiring competitive bidding.

(2) No such contract shall be entered into with any carrier unless the Secretary finds that such carrier will perform its obligations under the contract efficiently and effectively and will meet such requirements as to financial responsibility, legal authority, and other matters as he finds pertinent.

(3) Each such contract shall provide that the carrier—

[1]See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §918(a)(3), with respect to the Secretary's report to Congress on reimbursement of clinical laboratories.
See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §118, with respect to funds for audit and medical claims review.

(A) will take such action as may be necessary to assure that, where payment under this part for a service is on a cost basis, the cost is reasonable cost (as determined under section 1861(v));

(B) will take such action as may be necessary to assure that, where payment under this part for a service is on a charge basis, such charge will be reasonable and not higher than the charge applicable, for a comparable service and under comparable circumstances, to the policyholders and subscribers of the carrier, and such payment will (except as otherwise provided in section 1870(f)) be made—

(i) on the basis of an itemized bill; or

(ii) on the basis of an assignment under the terms of which (I) the reasonable charge is the full charge for the service and (II) the physician or other person furnishing such service agrees not to charge for such service if payment may not be made therefor by reason of the provisions of paragraph (1) of section 1862(a)[1], and if the individual to whom such service was furnished was without fault in incurring the expenses of such service, and if the Secretary's determination that payment (pursuant to such assignment) was incorrect and was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.[2] (except in the case of physicians' services and ambulance service furnished as described in section 1862(a)(4), other than for purposes of section 1870(f));

but (in the case of bills submitted, or requests for payment made, after March 1968) only if the bill is submitted, or a written request for payment is made in such other form as may be permitted under regulations, no later than the close of the calendar year following the year in which such service is furnished (deeming any service furnished in the last 3 months of any calendar year to have been furnished in the succeeding calendar year);

(C) will establish and maintain procedures pursuant to which an individual enrolled under this part will be granted an opportunity for a fair hearing by the carrier, in any case where the amount in controversy is $100 or more, when requests for payment under this part with respect to services furnished him are denied or are not acted upon with reasonable promptness or when the amount of such payment is in controversy;

(D) will furnish to the Secretary such timely information and reports as he may find necessary in performing his functions under this part;

(E) will maintain such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of the information and reports under subparagraph (D) and otherwise to carry out the purposes of this part; and

(F) will take such action as may be necessary to assure that where payment under this part for a service rendered is on a

[1] P.L. 97-248, §128(d)(1), struck out "1862" and substituted "1862(a)", effective September 3, 1982.
[2] As in original. Period should be stricken.

charge basis, such payment shall be determined on the basis of the charge that is determined in accordance with this section on the basis of customary and prevailing charge levels in effect at the time the service was rendered or, in the case of services rendered more than 12 months before the year (ending on June 30) in which the bill is submitted or request for payment is made, on the basis of such levels in effect for the 12-month period preceding such year;[1]

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the twelve-month period (beginning July 1 of each year) in which the service is rendered[2]. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1861(s)(6), charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this title and

[1]P.L. 96-499, §946(b), added subparagraph (F), effective with respect to bills submitted or requests for payment made on or after July 1, 1981.

[2]P.L. 96-499, §946(a), struck out "bill is submitted or the request for payment is made" and substituted "service is rendered", effective with respect to bills submitted or requests for payment made on or after July 1, 1981.

acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on July 1 in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975. The amount of any charges for outpatient services which shall be considered reasonable shall be subject to be limitations established by regulations issued by the Secretary pursuant to section 1861(v)(1)(K), and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility[1].[2]

(4) Each contract under this section shall be for a term of at least one year, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the carrier involved as he may provide in regulations) if he finds that the carrier has failed substantially to carry out the contract or is carrying out the contract in a manner inconsistent with the efficient and effective administration of the insurance program established by this part.

(5) No payment under this part for a service provided to any individual shall (except as provided in section 1870) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (B) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) or (B) of such sentence); but nothing in this

[1]P.L. 97-248, §104(a), inserted ", and in determining the reasonable charge for such services, the Secretary may limit such reasonable charge to a percentage of the amount of the prevailing charge for similar services furnished in a physician's office, taking into account the extent to which overhead costs associated with such outpatient services have been included in the reasonable cost or charge of the facility", effective with respect to services furnished on or after October 1, 1982.

[2]P.L. 97-35, §2142(b), added the preceding sentence, effective August 13, 1981.

subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this title is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(6)(A) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), the carrier shall not provide (except on the basis described in subparagraph (C)) for payment for such services under this part—

(i) unless—

(I) the physician renders sufficient personal and identifiable physicians' services to the patient to exercise full, personal control over the management of the portion of the case for which the payment is sought,

(II) the services are of the same character as the services the physician furnishes to patients not entitled to benefits under this title, and

(III) at least 25 percent of the hospital's patients (during a representative past period, as determined by the Secretary) who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) paid all or a substantial part of charges (other than nominal charges) imposed for such services; and

(ii) to the extent that the amount of the payment exceeds the reasonable charge for the services (with the customary charge determined consistent with subparagraph (B)).

(B) The customary charge for such services in a hospital shall be determined in accordance with regulations issued by the Secretary and taking into account the following factors:

(i) In the case of a physician who has a substantial practice outside the teaching setting, the carrier shall take into account the amounts the physician charges for similar services in the physician's outside practice.

(ii) In the case of a physician who does not have a practice described in clause (i), if the hospital, its physicians, or other appropriate billing entity has established one or more schedules of charges which are collected for medical and surgical services, the carrier shall base payment under this title on the greater of—

(I) the charges (other than nominal charges) which are most frequently collected in full or substantial part with respect to patients who were not entitled to benefits under this title and who were furnished services described in subclauses (I) and (II) of subparagraph (A)(i), or

(II) the mean of the charges (other than nominal charges) which were collected in full or substantial part with respect to such patients.

(C) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), if the conditions described in subclauses (I) and (II) of subparagraph (A)(i) are met and if the physician elects payment to be determined under this subparagraph, the carrier shall provide for payment for such services under this part on the basis of regulations of the Secretary governing reimbursement for the services of hospital-based physicians (and not on any other basis).

(D)(i) In the case of physicians' services furnished to a patient in a hospital with a teaching program approved as specified in section 1861(b)(6) but which does not meet the conditions described in section 1861(b)(7), no payment shall be made under this part for services of assistants at surgery with respect to a surgical procedure if such hospital has a training program relating to the medical specialty required for such surgical procedure and a qualified individual on the staff of the hospital is available to provide such services; except that payment may be made under this part for such services, to the extent that such payment is otherwise allowed under this paragraph, if such services, as determined under regulations of the Secretary—

(I) are required due to exceptional medical circumstances,

(II) are performed by team physicians needed to perform complex medical procedures, or

(III) constitute concurrent medical care relating to a medical condition which requires the presence of, and active care by, a physician of another specialty during surgery,

and under such other circumstances as the Secretary determines by regulation to be appropriate.

(ii) For purposes of this subparagraph, the term "assistant at surgery" means a physician who actively assists the physician in charge of a case in performing a surgical procedure.

(iii) The Secretary shall determine appropriate methods of reimbursement of assistants at surgery where such services are reimbursable under this part.[1]

(c) Any contract entered into with a carrier under this section shall provide for advances of funds to the carrier for the making of payments by it under this part, and shall provide for payment of the cost of administration of the carrier, as determined by the Secretary to be necessary and proper for carrying out the functions covered by the contract.

(d) Any contract with a carrier under this section may require such carrier or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(e)(1) No individual designated pursuant to a contract under this section as a certifying officer shall, in the absence of gross negligence

[1]P.L. 97-248, §113(a), added subparagraph (D), effective with respect to services performed on or after October 1, 1982.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §113(b)(2), with respect to regulations implementing this subparagraph.

or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1) of this subsection.

(3) No such carrier shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(f) For purposes of this part, the term "carrier" means—

(1) with respect to providers of services and other persons, a voluntary association, corporation, partnership, or other nongovernmental organization which is lawfully engaged in providing, paying for, or reimbursing the cost of, health services under group insurance policies or contracts, medical or hospital service agreements, membership or subscription contracts, or similar group arrangements, in consideration of premiums or other periodic charges payable to the carrier, including a health benefits plan duly sponsored or underwritten by an employee organization; and

(2) with respect to providers of services only, any agency or organization (not described in paragraph (1)) with which an agreement is in effect under section 1816.

(g) The Railroad Retirement Board shall, in accordance with such regulations as the Secretary may prescribe, contract with a carrier or carriers to perform the functions set out in this section with respect to individuals entitled to benefits as qualified railroad retirement beneficiaries pursuant to section 226(a) of this Act and section 7(d) of the Railroad Retirement Act of 1974[1].

(h) If a physician's bill or request for payment for a physician's services includes a charge to a patient for a laboratory test for which payment may be made under this part, the amount payable with respect to the test shall be determined as follows:

(1) If the bill or request for payment indicates that the physician who submitted the bill or for whose services the request for payment was made personally performed or supervised the performance of the test or that another physician with whom the physician shares his practice personally performed or supervised the test, the payment shall be the reasonable charge for the test (less the applicable deductible and coinsurance amounts).

(2) If the bill or request for payment indicates that the test was performed by a laboratory, identifies the laboratory, and indicates the amount the laboratory charged the physician who submitted the bill or for whose services the request for payment was made, payment for the test shall be the lower of—

(A) the laboratory's reasonable charge to individuals enrolled under this part for the test, or

(B) the amount the laboratory charged the physician for the test,

plus a nominal fee (where the physician bills for such a service) to cover the physician's costs in collecting and handling the

[1]P.L. 75-162 [as amended by P.L. 93-445].

sample on which the test was performed (less the applicable deductible and coinsurance amounts).

(3) If the bill or request for payment (A) does not indicate who performed the test, or (B) indicates that the test was performed by a laboratory but does not identify the laboratory or include the amount charged by the laboratory, payment shall be the lowest charged[1] at which the carrier estimates the test could have been secured by a physician from a laboratory serving the locality (less the applicable deductible and coinsurance amounts).[2]

STATE AGREEMENTS FOR COVERAGE OF ELIGIBLE INDIVIDUALS WHO ARE RECEIVING MONEY PAYMENTS UNDER PUBLIC ASSISTANCE PROGRAMS (OR ARE ELIGIBLE FOR MEDICAL ASSISTANCE)[3]

SEC. 1843. [42 U.S.C. 1395v] (a) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981, enter into an agreement with such State pursuant to which all eligible individuals in either of the coverage groups described in subsection (b) (as specified in the agreement) will be enrolled under the program established by this part.

(b) An agreement entered into with any State pursuant to subsection (a) may be applicable to either of the following coverage groups:

(1) individuals receiving money payments under the plan of such State approved under title I or title XVI; or

(2) individuals receiving money payments under all of the plans of such State approved under titles I, X, XIV, and XVI, and part A of title IV.

Except as provided in subsection (g), there shall be excluded from any coverage group any individual who is entitled to monthly insurance benefits under title II or who is entitled to receive an annuity under the Railroad Retirement Act of 1974[4]. Effective January 1, 1974, and subject to section 1902(f), the Secretary shall, at the request of any State not eligible to participate in the State plan program established under title XVI, continue in effect the agreement entered into under this section with such State subject to such modifications as the Secretary may by regulations provide to take account of the termination of any plans of such State approved under titles I, X, XIV, and XVI and the establishment of the supplemental security income program under title XVI.

(c) For purposes of this section, an individual shall be treated as an eligible individual only if he is an eligible individual (within the meaning of section 1836) on the date an agreement covering him is entered into under subsection (a) or he becomes an eligible individual (within the meaning of such section) at any time after such date; and he shall be treated as receiving money payments described in subsection (b) if he receives such payments for the month in which the agreement is entered into or any month thereafter.

(d) In the case of any individual enrolled pursuant to this section—

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[1] As in original. Should insert "amount" before "charged" or substitute "charge" for "charged".

[2] P.L. 96-499, §918(a)(1), added subsection (h), effective with respect to bills submitted and requests for payment made on or after April 1, 1981 [regulations required by P.L. 96-499, §918(a)(2), were published August 24, 1981, in 46 Federal Register 42669].

[3] See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §947(e), with respect to shortened part B termination period for individuals whose premiums medicaid has ceased to pay.

[4] P.L. 75-162 [as amended by P.L. 93-445].

(1) the monthly premium to be paid by the State shall be determined under section 1839 (without any increase under subsection (b)[1] thereof);

(2) his coverage period shall begin on whichever of the following is the latest:

(A) July 1, 1966;

(B) the first day of the third month following the month in which the State agreement is entered into;

(C) the first day of the first month in which he is both an eligible individual and a member of a coverage group specified in the agreement under this section; or

(D) such date as may be specified in the agreement; and

(3) his coverage period attributable to the agreement with the State under this section shall end on the last day of whichever of the following first occurs:

(A) the month in which he is determined by the State agency to have become ineligible both for money payments of a kind specified in the agreement and (if there is in effect a modification entered into under subsection (h)) for medical assistance, or

(B) the month preceding the first month for which he becomes entitled to monthly benefits under title II or to an annuity or pension under the Railroad Retirement Act of 1937[2].

(e) Any individual whose coverage period attributable to the State agreement is terminated pursuant to subsection (d)(3) shall be deemed for purposes of this part (including the continuation of his coverage period under this part) to have enrolled under section 1837 in the initial general enrollment period provided by section 1837(c). The coverage period under this part of any such individual who (in the last month of his coverage period attributable to the State agreement or in any of the following six months) files notice that he no longer wishes to participate in the insurance program established by this part, shall terminate at the close of the month in which the notice is filed.[3]

(f) With respect to eligible individuals receiving money payments under the plan of a State approved under title I, X, XIV, or XVI or part A of title IV, or eligible to receive medical assistance under the plan of such State approved under title XIX, if the agreement entered into under this section so provides, the term "carrier" as defined in section 1842(f) also includes the State agency, specified in such agreement, which administers or supervises the administration of the plan of such State approved under title I, XVI, or XIX. The agreement shall also contain such provisions as will facilitate the financial transactions of the State and the carrier with respect to deductions, coinsurance, and otherwise, and as will lead to economy and efficiency of operation, with respect to individuals receiving money payments under plans of the State approved under titles I, X, XIV, and XVI, and part A of title IV, and individuals eligible to receive medical assistance under the plan of the State approved under title XIX.

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[1] P.L. 98-21, §606(a)(3)(E), struck out "(c)" and substituted "(b)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2] P.L. 75-162, "Railroad Retirement Act of 1974" [as amended by P.L. 93-445].

[3] P.L. 96-499, §947(a), added the preceding sentence, effective with respect to notices filed after March 1981.

(g)(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the second sentence of subsection (b) shall not apply with respect to such agreement.

(2) In the case of any individual who would (but for this subsection) be excluded from the applicable coverage group described in subsection (b) by the second sentence of such subsection—

(A) subsections (c) and (d)(2) shall be applied as if such subsections referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and

(B) subsection (d)(3)(B) shall not apply so long as there is in effect a modification entered into by the State under this subsection.[1]

(h)(1) The Secretary shall, at the request of a State made before January 1, 1970, or during 1981, enter into a modification of an agreement entered into with such State pursuant to subsection (a) under which the coverage group described in subsection (b) and specified in such agreement is broadened to include individuals who are eligible to receive medical assistance under the plan of such State approved under title XIX.

(2) For purposes of this section, an individual shall be treated as eligible to receive medical assistance under the plan of the State approved under title XIX if, for the month in which the modification is entered into under this subsection or for any month thereafter, he has been determined to be eligible to receive medical assistance under such plan. In the case of any individual who would (but for this subsection) be excluded from the agreement, subsections (c) and (d)(2) shall be applied as if they referred to the modification under this subsection (in lieu of the agreement under subsection (a)), and subsection (d)(2)(C) shall be applied by substituting "second month following the first month" for "first month".

APPROPRIATIONS TO COVER GOVERNMENT CONTRIBUTIONS AND CONTINGENCY RESERVE

SEC. 1844. [42 U.S.C. 1395w] (a) There are authorized to be appropriated from time to time, out of any moneys in the Treasury not otherwise appropriated, to the Federal Supplementary Medical Insurance Trust Fund—

(1)(A) a Government contribution equal to the aggregate premiums payable for a month for enrollees age 65 and over under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee age 65 and over as determined under section 1839(a)(1)[2] for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(a)(3) or 1839(e)[3], as the case may be[4], to

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[1] P.L. 96-499, §947(c)(3), struck out subparagraph (C), effective with respect to notices filed after March 1981.

[2] P.L. 98-21, §606(a)(3)(F)(i), struck out "1839(c)(1)" and substituted "1839(a)(1)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[3] P.L. 98-21, §606(a)(3)(F)(ii), struck out "1839(c)(3) or 1839(g)" and substituted "1839(a)(3) or 1839(e)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[4] P.L. 97-248, §124(c), inserted "or 1839(g), as the case may be", effective September 3, 1982.

(ii) the dollar amount of the premium per enrollee for such month, plus

(B) a Government contribution equal to the aggregate premiums payable for a month for enrollees under age 65 under this part and deposited in the Trust Fund, multiplied by the ratio of—

(i) twice the dollar amount of the actuarially adequate rate per enrollee under age 65 as determined under section 1839(a)(4)[1] for such month minus the dollar amount of the premium per enrollee for such month, as determined under section 1839(a)(3) or 1839(e)[2], as the case may be, to

(ii) the dollar amount of the premium per enrollee for such month.[4]

(2) such sums as the Secretary deems necessary to place the Trust Fund, at the end of any fiscal year occurring after June 30, 1967, in the same position in which it would have been at the end of such fiscal year if (A) a Government contribution representing the excess of the premiums deposited in the Trust Fund during the fiscal year ending June 30, 1967, over the Government contribution actually appropriated to the Trust Fund during such fiscal year had been appropriated to it on June 30, 1967, and (B) the Government contribution for premiums deposited in the Trust Fund after June 30, 1967, had been appropriated to it when such premiums were deposited.

(b) In order to assure prompt payment of benefits provided under this part and the administrative expenses thereunder during the early months of the program established by this part, and to provide a contingency reserve, there is also authorized to be appropriated, out of any moneys in the Treasury not otherwise appropriated, to remain available through the calendar year 1969 for repayable advances (without interest) to the Trust Fund, an amount equal to $18 multiplied by the number of individuals (as estimated by the Secretary) who could be covered in July 1966 by the insurance program established by this part if they had theretofore enrolled under this part.

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[1]P.L. 98-21, §606(a)(3)(G)(i), struck out "(c)(4)" and substituted "(a)(4)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2]P.L. 98-21, §606(a)(3)(G)(ii), struck out "1839(c)(3) or 1839(g)" and substituted "1839(a)(3) or 1839(e)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[3]P.L. 97-248, §124(c), inserted "or 1839(g), as the case may be", effective September 3, 1982.

[4]As in original. Should not be a period.

PART C—MISCELLANEOUS PROVISIONS

DEFINITIONS OF SERVICES, INSTITUTIONS, ETC.[1]

SEC. 1861. [42 U.S.C. 1395x] For purposes of this title—

Spell of Illness

(a) The term "spell of illness" with respect to any individual means a period of consecutive days—

(1) beginning with the first day (not included in a previous spell of illness) (A) on which such individual is furnished inpatient hospital services or extended care services, and (B) which occurs in a month for which he is entitled to benefits under part A, and

(2) ending with the close of the first period of 60 consecutive days thereafter on each of which he is neither an inpatient of a hospital nor an inpatient of a skilled nursing facility.

Inpatient Hospital Services

(b) The term "inpatient hospital services" means the following items and services furnished to an inpatient of a hospital and (except as provided in paragraph (3)) by the hospital—

(1) bed and board;

(2) such nursing services and other related services, such use of hospital facilities, and such medical social services as are ordinarily furnished by the hospital for the care and treatment of inpatients, and such drugs, biologicals, supplies, appliances, and equipment, for use in the hospital, as are ordinarily furnished by such hospital for the care and treatment of inpatients; and

(3) such other diagnostic or therapeutic items or services, furnished by the hospital or by others under arrangements with them made by the hospital, as are ordinarily furnished to inpatients either by such hospital or by others under such arrangements;

excluding, however—

(4) medical or surgical services provided by a physician, resident, or intern; and

(5) the services of a private-duty nurse or other private-duty attendant.

Paragraph (4) shall not apply to services provided in a hospital by—

(6) an intern or a resident-in-training under a teaching program approved by the Council on Medical Education of the American Medical Association or, in the case of an osteopathic hospital, approved by the Committee on Hospitals of the Bureau of Professional Education of the American Osteopathic Association, or, in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of dentistry, approved by the Council on Dental Education of the American Dental Association, or in the case of services in a hospital or osteopathic hospital by an intern or resident-in-training in the field of podiatry, approved by the Council on Podiatry Education of the American Podiatry Association; or

[1] See P.L. 94-437, "Indian Health Care Improvement Act", §403, with respect to an accounting of funds which must be included in the Secretary's annual report.

(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title.

Inpatient Psychiatric Hospital Services

(c) The term "inpatient psychiatric hospital services" means inpatient hospital services furnished to an inpatient of a psychiatric hospital.

Inpatient Tuberculosis Hospital Services

(d) The term "inpatient tuberculosis hospital services" means inpatient hospital services furnished to an inpatient of a tuberculosis hospital.

Hospital

(e) The term "hospital" (except for purposes of sections 1814(d), 1814(f), and 1835(b), subsection (a)(2) of this section, paragraph (7) of this subsection, and subsection (i)[1] of this section) means an institution which—

(1) is primarily engaged in providing, by or under the supervision of physicians, to inpatients (A) diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) maintains clinical records on all patients;

(3) has bylaws in effect with respect to its staff of physicians;

(4) has a requirement that every patient must be under the care of a physician;

(5) provides 24-hour nursing service rendered or supervised by a registered professional nurse, and has a licensed practical nurse or registered professional nurse on duty at all times; except that until January 1, 1979, the Secretary is authorized to waive the requirement of this paragraph for any one-year period with respect to any institution, insofar as such requirement relates to the provision of twenty-four-hour nursing service rendered or supervised by a registered professional nurse (except that in any event a registered professional nurse must be present on the premises to render or supervise the nursing service provided, during at least the regular daytime shift), where immediately preceding such one-year period he finds that—

(A) such institution is located in a rural area and the supply of hospital services in such area is not sufficient to meet the needs of individuals residing therein,

(B) the failure of such institution to qualify as a hospital would seriously reduce the availability of such services to such individuals, and

[1] P.L. 96-499, §930(k)(1), struck out "subsections (i) and (n)" and substituted "subsection (i)", effective with respect to services furnished on or after July 1, 1981.

(C) such institution has made and continues to make a good faith effort to comply with this paragraph, but such compliance is impeded by the lack of qualified nursing personnel in such area;

(6) has in effect a hospital utilization review plan which meets the requirements of subsection (k);

(7) in the case of an institution in any State in which State or applicable local law provides for the licensing of hospitals, (A) is licensed pursuant to such law or (B) is approved, by the agency of such State or locality responsible for licensing hospitals, as meeting the standards established for such licensing;

(8) has in effect an overall plan and budget that meets the requirements of subsection (z); and

(9) meets such other requirements as the Secretary finds necessary in the interest of the health and safety of individuals who are furnished services in the institution.

For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. For purposes of sections 1814(d) and 1835(b) (including determination of whether an individual received inpatient hospital services or diagnostic services for purposes of such sections), section 1814(f)(2), and subsection (i)[1] of this section, such term includes any institution which (i) meets the requirements of paragraphs (5) and (7) of this subsection, (ii) is not primarily engaged in providing the services described in section 1861(j)(1)(A) and (iii) is primarily engaged in providing, by or under the supervision of individuals referred to in paragraph (1) of section 1861(r), to inpatients diagnostic services and therapeutic services for medical diagnosis, treatment, and care of injured, disabled, or sick persons, or rehabilitation services for the rehabilitation of injured, disabled, or sick persons. For purposes of section 1814(f)(1), such term includes an institution which (i) is a hospital for purposes of sections 1814(d), 1814(f)(2), and 1835(b) and (ii) is accredited by the Joint Commission on Accreditation of Hospitals, or is accredited by or approved by a program of the country in which such institution is located if the Secretary finds the accreditation or comparable approval standards of such program to be essentially equivalent to those of the Joint Commission on Accreditation of Hospitals. Notwithstanding the preceding provisions of this subsection, such term shall not, except for purposes of subsection (a)(2), include any institution which is primarily for the care and treatment of mental diseases or tuberculosis unless it is a tuberculosis hospital (as defined in subsection (g)) or unless it is a psychiatric hospital (as defined in subsection (f)). The term "hospital" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to items and services ordinarily furnished by such institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations. For provisions deeming certain requirements of this subsection to be met in the case of

[1] P.L. 96-499, §930(k)(2), struck out "subsections (i) and (n)" and substituted "subsection (i)", effective with respect to services furnished on or after July 1, 1981.

accredited institutions, see section 1865. The term "hospital" also includes a facility of fifty beds or less which is located in an area determined by the Secretary to meet the definition relating to a rural area described in subparagraph (A) of paragraph (5) of this subsection and which meets the other requirements of this subsection, except that—

(A) with respect to the requirements for nursing services applicable after December 31, 1978, such requirements shall provide for temporary waiver of the requirements, for such period as the Secretary deems appropriate, where (i) the facility's failure to fully comply with the requirements is attributable to a temporary shortage of qualified nursing personnel in the area in which the facility is located, (ii) a registered professional nurse is present on the premises to render or supervise the nursing service provided during at least the regular daytime shift, and (iii) the Secretary determines that the employment of such nursing personnel as are available to the facility during such temporary period will not adversely affect the health and safety of patients;

(B) with respect to the health and safety requirements promulgated under paragraph (9), such requirements shall be applied by the Secretary to a facility herein defined in such manner as to assure that personnel requirements take into account the availability of technical personnel and the educational opportunities for technical personnel in the area in which such facility is located, and the scope of services rendered by such facility; and the Secretary, by regulations, shall provide for the continued participation of such a facility where such personnel requirements are not fully met, for such period as the Secretary determines that (i) the facility is making good faith efforts to fully comply with the personnel requirements, (ii) the employment by the facility of such personnel as are available to the facility will not adversely affect the health and safety of patients, and (iii) if the Secretary has determined that because of the facility's waiver under this subparagraph the facility should limit its scope of services in order not to adversely affect the health and safety of the facility's patients, the facility is so limiting the scope of services it provides; and

(C) with respect to the fire and safety requirements promulgated under paragraph (9), the Secretary (i) may[1] waive, for such period as he deems appropriate, specific provisions of such requirements which if rigidly applied would result in unreasonable hardship for such a facility and which, if not applied, would not jeopardize the health and safety of patients, and (ii) may accept a facility's compliance with all applicable State codes relating to fire and safety in lieu of compliance with the fire and safety requirements promulgated under paragraph (9), if he determines that such State has in effect fire and safety codes, imposed by State law, which adequately protect patients.

Psychiatric Hospital

(f) The term "psychiatric hospital" means an institution which—

[1] P.L. 97-248, §128(d)(2), struck out "may (i)," and substituted "(i) may", effective September 3, 1982.

(1) is primarily engaged in providing, by or under the supervision of a physician, psychiatric services for the diagnosis and treatment of mentally ill persons;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals entitled to hospital insurance benefits under part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "psychiatric hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Tuberculosis Hospital

(g) The term "tuberculosis hospital" means an institution which—

(1) is primarily engaged in providing, by or under the supervision of a physician, medical services for the diagnosis and treatment of tuberculosis;

(2) satisfies the requirements of paragraphs (3) through (9) of subsection (e);

(3) maintains clinical records on all patients and maintains such records as the Secretary finds to be necessary to determine the degree and intensity of the treatment provided to individuals covered by the insurance program established by part A;

(4) meets such staffing requirements as the Secretary finds necessary for the institution to carry out an active program of treatment for individuals who are furnished services in the institution; and

(5) is accredited by the Joint Commission on Accreditation of Hospitals.

In the case of an institution which satisfies paragraphs (1) and (2) of the preceding sentence and which contains a distinct part which also satisfies paragraphs (3) and (4) of such sentence, such distinct part shall be considered to be a "tuberculosis hospital" if the institution is accredited by the Joint Commission on Accreditation of Hospitals or if such distinct part meets requirements equivalent to such accreditation requirements as determined by the Secretary.

Extended Care Services

(h) The term "extended care services" means the following items and services furnished to an inpatient of a skilled nursing facility and (except as provided in paragraphs (3) and (6)) by such skilled nursing facility—

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(1) nursing care provided by or under the supervision of a registered professional nurse;

(2) bed and board in connection with the furnishing of such nursing care;

(3) physical, occupational, or speech therapy furnished by the skilled nursing facility or by others under arrangements with them made by the facility;

(4) medical social services;

(5) such drugs, biologicals, supplies, appliances, and equipment, furnished for use in the skilled nursing facility, as are ordinarily furnished by such facility for the care and treatment of inpatients;

(6) medical services provided by an intern or resident-in-training of a hospital with which the facility has in effect a transfer agreement (meeting the requirements of subsection (l)), under a teaching program of such hospital approved as provided in the last sentence of subsection (b), and other diagnostic or therapeutic services provided by a hospital with which the facility has such an agreement in effect; and

(7) such other services necessary to the health of the patients as are generally provided by skilled nursing facilities;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

Post-Hospital Extended Care Services

(i) The term "post-hospital extended care services" means extended care services furnished an individual after transfer from a hospital in which he was an inpatient for not less than 3 consecutive days before his discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to an individual after transfer from a hospital, and he shall be deemed to have been an inpatient in the hospital immediately before transfer therefrom, if he is admitted to the skilled nursing facility (A) within 30 days after discharge from such hospital, or (B) within such time as it would be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that skilled nursing facility care would not be medically appropriate within 30 days after discharge from a hospital; and an individual shall be deemed not to have been discharged from a skilled nursing facility if, within 30 days after discharge therefrom, he is admitted to such facility or any other skilled nursing facility.

Skilled Nursing Facility[1]

(j) The term "skilled nursing facility" means (except for purposes of subsection (a)(2)) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (l)) with one or more hospitals having agreements in effect under section 1866 and which—

(1) is primarily engaged in providing to inpatients (A) skilled nursing care and related services for patients who require medical or nursing care, or (B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons;

(2) has policies, which are developed with the advice of (and with provision of[2] review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more registered professional nurses, to govern the skilled nursing care and related medical or other services it provides;

(3) has a physician, a registered professional nurse, or a medical staff responsible for the execution of such policies;

(4)(A) has a requirement that the health care of every patient must be under the supervision of a physician, and (B) provides for having a physician available to furnish necessary medical care in case of emergency;

(5) maintains clinical records on all patients;

(6) provides 24-hour nursing service which is sufficient to meet nursing needs in accordance with the policies developed as provided in paragraph (2), and has at least one registered professional nurse employed full time;

(7) provides appropriate methods and procedures for the dispensing and administering of drugs and biologicals;

(8) has in effect a utilization review plan which meets the requirements of subsection (k);

(9) in the case of an institution in any State in which State or applicable local law provides for the licensing of institutions of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing;

(10) has in effect an overall plan and budget that meets the requirements of subsection (z);

(11) complies with the requirements of section 1124;

(12) cooperates in an effective program which provides for a regular program of independent medical evaluation and audit of the patients in the facility to the extent required by the programs in which the facility participates (including medical evaluation of each patient's need for skilled nursing facility care);

(13) meets such provisions of such edition (as is specified by the Secretary in regulations) of the Life Safety Code of the National Fire Protection Association as are applicable to nursing homes; except that the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if

[1] See P.L. 95-142, "Medicare-Medicaid Anti-Fraud and Abuse Amendments", §21(b), with respect to publication of regulations defining charges which may be made against patients' funds.

[2] As in original. Possibly should be "for".

rigidly applied would result in unreasonable hardship upon a nursing home, but only if such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;[1]

(14) establishes and maintains a system that (A) assures a full and complete accounting of its patients' personal funds, and (B) includes the use of such separate account for such funds as will preclude any commingling of such funds with facility funds or with the funds of any person other than another such patient; and

(15) meets such other conditions relating to the health and safety of individuals who are furnished services in such institution or relating to the physical facilities thereof as the Secretary may find necessary (subject to the second sentence of section 1863), except that the Secretary shall not require as a condition of participation that medical social services be furnished in any such institution. Notwithstanding any other provision of law, all information concerning skilled nursing facilities required by this subsection to be filed with the Secretary shall be made available to Federal or State employees for purposes consistent with the effective administration of programs established under titles XVIII and XIX of this Act;

except that such term shall not (other than for purposes of subsection (a)(2)) include any institution which is primarily for the care and treatment of mental diseases or tuberculosis. For purposes of subsection (a)(2), such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "skilled nursing facility" also includes an institution described in paragraph (1) of subsection (y), to the extent and subject to the limitations provided in such subsection. To the extent that paragraph (6) of this subsection may be deemed to require that any skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if he finds that—

(A) such facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein,

(B) such facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

(C) such facility (i) has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or (ii) has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

[1]See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §915(b), with respect to Life Safety Code requirements.

Utilization Review

(k) A utilization review plan of a hospital or skilled nursing facility shall be considered sufficient if it is applicable to services furnished by the institution to individuals entitled to insurance benefits under this title and if it provides—

(1) for the review, on a sample or other basis, of admissions to the institution, the duration of stays therein, and the professional services (including drugs and biologicals) furnished, (A) with respect to the medical necessity of the services, and (B) for the purpose of promoting the most efficient use of available health facilities and services;

(2) for such review to be made by either (A) a staff committee of the institution composed of two or more physicians (of which at least two must be physicians described in subsection (r)(1) of this section), with or without participation of other professional personnel, or (B) a group outside the institution which is similarly composed and (i) which is established by the local medical society and some or all of the hospitals and skilled nursing facilities in the locality, or (ii) if (and for as long as) there has not been established such a group which serves such institution, which is established in such other manner as may be approved by the Secretary;

(3) for such review, in each case of inpatient hospital services or extended care services furnished to such an individual during a continuous period of extended duration, as of such days of such period (which may differ for different classes of cases) as may be specified in regulations, with such review to be made as promptly as possible, after each day so specified, and in no event later than one week following such day; and

(4) for prompt notification to the institution, the individual, and his attending physician of any finding (made after opportunity for consultation to such attending physician) by the physician members of such committee or group that any further stay in the institution is not medically necessary.

The review committee must be composed as provided in clause (B) of paragraph (2) rather than as provided in clause (A) of such paragraph in the case of any hospital or skilled nursing facility where, because of the small size of the institution, or (in the case of a skilled nursing facility) because of lack of an organized medical staff, or for such other reason or reasons as may be included in regulations, it is impracticable for the institution to have a properly functioning staff committee for the purposes of this subsection. If the Secretary determines that the utilization review procedures established pursuant to title XIX are superior in their effectiveness to the procedures required under this section, he may, to the extent that he deems it appropriate, require for purposes of this title that the procedures established pursuant to title XIX be utilized instead of the procedures required by this section.

Agreements for Transfer Between Skilled Nursing Facilities and Hospitals

(l) A hospital and a skilled nursing facility shall be considered to have a transfer agreement in effect if, by reason of a written

agreement between them or (in case the two institutions are under common control) by reason of a written undertaking by the person or body which controls them, there is reasonable assurance that—

(1) transfer of patients will be effected between the hospital and the skilled nursing facility whenever such transfer is medically appropriate as determined by the attending physician; and

(2) there will be interchange of medical and other information necessary or useful in the care and treatment of individuals transferred between the institutions, or in determining whether such individuals can be adequately cared for otherwise than in either of such institutions.

Any skilled nursing facility which does not have such an agreement in effect, but which is found by a State agency (of the State in which such facility is situated) with which an agreement under section 1864 is in effect (or, in the case of a State in which no such agency has an agreement under section 1864, by the Secretary) to have attempted in good faith to enter into such an agreement with a hospital sufficiently close to the facility to make feasible the transfer between them of patients and the information referred to in paragraph (2), shall be considered to have such an agreement in effect if and for so long as such agency (or the Secretary, as the case may be) finds that to do so is in the public interest and essential to assuring extended care services for persons in the community who are eligible for payments with respect to such services under this title.

Home Health Services[1]

(m) The term "home health services" means the following items and services furnished to an individual, who is under the care of a physician, by a home health agency or by others under arrangements with them made by such agency, under a plan (for furnishing such items and services to such individual) established and periodically reviewed by a physician, which items and services are, except as provided in paragraph (7), provided on a visiting basis in a place of residence used as such individual's home—

(1) part-time or intermittent nursing care provided by or under the supervision of a registered professional nurse;

(2) physical, occupational, or speech therapy;

(3) medical social services under the direction of a physician;

(4) to the extent permitted in regulations, part-time or intermittent services of a home health aide who has successfully completed a training program approved by the Secretary[2];

(5) medical supplies (other than drugs and biologicals), and the use of medical appliances, while under such a plan;

(6) in the case of a home health agency which is affiliated or under common control with a hospital, medical services provided by an intern or resident-in-training of such hospital, under a teaching program of such hospital approved as provided in the last sentence of subsection (b); and

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[1]See P.L. 78-410, "Public Health Service Act", §339, with respect to home health services.
See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §966, with respect to demonstration projects relating to training of AFDC recipients as home health aides.
See P.L. 97-414, "Orphan Drug Act", §6(b)-(f), with respect to home health services studies and report to Congress.

[2]P.L. 96-499, §930(l), added "who has successfully completed a training program approved by the Secretary", effective with respect to services furnished on or after July 1, 1981.

(7) any of the foregoing items and services which are provided on an outpatient basis, under arrangements made by the home health agency, at a hospital or skilled nursing facility, or at a rehabilitation center which meets such standards as may be prescribed in regulations, and—

(A) the furnishing of which involves the use of equipment of such a nature that the items and services cannot readily be made available to the individual in such place of residence, or

(B) which are furnished at such facility while he is there to receive any such item or service described in clause (A),

but not including transportation of the individual in connection with any such item or service;

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital.

[(n) Repealed.[1]]

Home Health Agency[2]

(o) The term "home health agency" means a public agency or private organization, or a subdivision of such an agency or organization, which—

(1) is primarily engaged in providing skilled nursing services and other therapeutic services;

(2) has policies, established by a group of professional personnel (associated with the agency or organization), including one or more physicians and one or more registered professional nurses, to govern the services (referred to in paragraph (1)) which it provides, and provides for supervision of such services by a physician or registered professional nurse;

(3) maintains clinical records on all patients;

(4) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing agencies or organizations of this nature, as meeting the standards established for such licensing;

(5) has in effect an overall plan and budget that meets the requirements of subsection (z);

(6) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such agency or organization; and

(7) meets such additional requirements (including conditions relating to bonding or establishing of escrow accounts as the Secretary finds necessary for the financial security of the program) as the Secretary finds necessary for the effective and efficient operation of the program;

[3] except that for purposes of part A such term shall not include any

[1] P.L. 96-499, §930(m); 94 Stat. 2632.

[2] See P.L. 78-410, "Public Health Service Act", §339, with respect to home health services.
See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §930(s)(2), with respect to financial security.

[3] P.L. 96-499, §930(n)(2), struck out "except that such term shall not include a private organization which is not a nonprofit organization exempt from Federal income taxation under section 501 of the Internal Revenue Code of 1954 (or a subdivision of such organization) unless it is licensed pursuant to State law and it meets such additional standards and requirements as may be

agency or organization which is primarily for the care and treatment of mental diseases.

Outpatient Physical Therapy Services

(p) The term "outpatient physical therapy services" means physical therapy services furnished by a provider of services, a clinic, rehabilitation agency, or a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient—

(1) who is under the care of a physician (as defined in section 1861(r)(1)), and

(2) with respect to whom a plan prescribing the type, amount, and duration of physical therapy services that are to be furnished such individual has been established, and is periodically reviewed, by a physician (as so defined);

excluding, however—

(3) any item or service if it would not be included under subsection (b) if furnished to an inpatient of a hospital; and

(4) any such service—

(A) if furnished by a clinic or rehabilitation agency, or by others under arrangements with such clinic or agency, unless such clinic or rehabilitation agency—

(i) provides an adequate program of physical therapy services for outpatients and has the facilities and personnel required for such program or required for the supervision of such a program, in accordance with such requirements as the Secretary may specify,

(ii) has policies, established by a group of professional personnel, including one or more physicians (associated with the clinic or rehabilitation agency) and one or more qualified physical therapists, to govern the services (referred to in clause (i)) it provides,

(iii) maintains clinical records on all patients,

(iv) if such clinic or agency is situated in a State in which State or applicable local law provides for the licensing of institutions of this nature, (I) is licensed pursuant to such law, or (II) is approved by the agency of such State or locality responsible for licensing institutions of this nature, as meeting the standards established for such licensing; and

(v) meets such other conditions relating to the health and safety of individuals who are furnished services by such clinic or agency on an outpatient basis, as the Secretary may find necessary, or

(B) if furnished by a public health agency, unless such agency meets such other conditions relating to health and safety of individuals who are furnished services by such agency on an outpatient basis, as the Secretary may find necessary.

The term "outpatient physical therapy services" also includes physical therapy services furnished an individual by a physical therapist

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prescribed in regulations; and", effective with respect to services furnished on or after July 1, 1981.

(in his office or in such individual's home) who meets licensing and other standards prescribed by the Secretary in regulations, otherwise than under an arrangement with and under the supervision of a provider of services, clinic, rehabilitation agency, or public health agency, if the furnishing of such services meets such conditions relating to health and safety as the Secretary may find necessary. In addition, such term includes physical therapy services which meet the requirements of the first sentence of this subsection except that they are furnished to an individual as an inpatient of a hospital or extended care facility. The term "outpatient physical therapy services" also includes speech pathology services furnished by a provider of services, a clinic, rehabilitation agency, or by a public health agency, or by others under an arrangement with, and under the supervision of, such provider, clinic, rehabilitation agency, or public health agency to an individual as an outpatient, subject to the conditions prescribed in this subsection.

Physicians' Services

(q) The term "physicians' services" means professional services performed by physicians, including surgery, consultation, and home, office, and institutional calls (but not including services described in subsection (b)(6)).

Physician

(r) The term "physician", when used in connection with the performance of any function or action, means (1) a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by the State in which he performs such function or action (including a physician within the meaning of section 1101(a)(7)), (2) a doctor of dental surgery or of dental medicine who is legally authorized to practice dentistry by the State in which he performs such function and who is acting within the scope of his license when he performs such functions,[1] (3) a doctor of podiatric medicine for the purposes of subsection (s) of this section but only with respect to functions which he is legally authorized to perform as such by the State in which he performs them; and for the purposes of subsections (k) and (m) of this section and sections 1814(a) and 1835 but only if his performance of functions under subsections (k) and (m) and sections 1814(a) and 1835 is consistent with the policy of the institution or agency with respect to which he performs them and with the functions which he is legally authorized to perform, (4) a doctor of optometry who is legally authorized to practice optometry by the State in which he performs such function, but only with respect to services related to the condition of aphakia,[2] or (5) a chiropractor who is licensed as such by the State (or in a State which does not license chiropractors as such, is legally authorized to perform the services of a chiropractor in the jurisdiction in which he performs such services), and who meets uniform minimum standards promulgated by the Secretary, but only

[1] P.L. 96-499, §936(a), amended paragraph (2) in its entirety, effective with respect to services provided on or after July 1, 1981.

[2] P.L. 96-499, §937(a), struck out "establishing the necessity for prosthetic lenses," and substituted "services related to the condition of aphakia,", effective with respect to services furnished on or after July 1, 1981.

for the purpose of sections 1861(s)(1) and 1861(s)(2)(A) and only with respect to treatment by means of manual manipulation of the spine (to correct a subluxation demonstrated by X-ray to exist) which he is legally authorized to perform by the State or jurisdiction in which such treatment is provided. For the purposes of section 1862(a)(4) and subject to the limitations and conditions provided in the previous sentence, such term includes a doctor of one of the arts, specified in such previous sentence, legally authorized to practice such art in the country in which the inpatient hospital services (referred to in such section 1862(a)(4)) are furnished.

Medical and Other Health Services

(s) The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2)(A) services and supplies (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) furnished as an incident to a physician's professional service, of kinds which are commonly furnished in physicians' offices and are commonly either rendered without charge or included in the physicians' bills;

(B) hospital services (including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered) incident to physicians' services rendered to outpatients;

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services;

(E) rural health clinic services;

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;

(G) antigens (subject to quantity limitations prescribed in regulations by the Secretary) prepared by a physician, as defined in section 1861(r)(1), for a particular patient, including antigens so prepared which are forwarded to another qualified person (including a rural health clinic) for administration to such patient, from time to time, by or under the supervision of another such physician; and

(H) services furnished pursuant to a contract under section 1876 to a member of an eligible organization by a physician assistant or by a nurse practitioner (as defined in subsection (aa)(3)) and such services and supplies furnished as an incident to his service to such a member as would otherwise be covered under this part if furnished by a physician or as an incident to a physician's service;[1]

[1] P.L. 97-248, §114(b)(3), added this subparagraph, effective September 3, 1982.

(3) diagnostic X-ray tests (including tests under the supervision of a physician, furnished in a place of residence used as the patient's home, if the performance of such tests meets such conditions relating to health and safety as the Secretary may find necessary), diagnostic laboratory tests, and other diagnostic tests;

(4) X-ray, radium, and radioactive isotope therapy, including materials and services of technicians;

(5) surgical dressings, and splints, casts, and other devices used for reduction of fractures and dislocations;

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices;

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition; and

(10) pneumococcal vaccine and its administration.[1]

No diagnostic tests performed in any laboratory which is independent of a physician's office, a rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1814(d)) shall be included within paragraph (3) unless such laboratory—

(11)[2] if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(12)[3] meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

[1]P.L. 96-611, §1(a)(1)(D), added this paragraph (10), effective on, and applicable to services furnished on or after, July 1, 1981.

[2]P.L. 96-611, §1(a)(1)(A), redesignated paragraph (10) as paragraph (11), effective on, and applicable to services furnished on or after, July 1, 1981.

[3]P.L. 96-611, §1(a)(1)(A), redesignated paragraph (11) as paragraph (12), effective on, and applicable to services furnished on or after, July 1, 1981.

(13)[1] would not be included under subsection (b) if it were furnished to an inpatient of a hospital; or

(14)[2] is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1814(d) shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

Drugs and Biologicals

(t) The term "drugs" and the term "biologicals", except for purposes of subsection (m)(5) of this section, include only such drugs and biologicals, respectively, as are included (or approved for inclusion) in the United States Pharmacopoeia, the National Formulary, or the United States Homeopathic Pharmacopoeia, or in New Drugs or Accepted Dental Remedies (except for any drugs and biologicals unfavorably evaluated therein), or as are approved by the pharmacy and drug therapeutics committee (or equivalent committee) of the medical staff of the hospital furnishing such drugs and biologicals for use in such hospital.

Provider of Services

(u) The term "provider of services" means a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility,[3] or[4] home health agency,[5] hospice program,[6] or, for purposes of section 1814(g) and section 1835(e), a fund.

Reasonable Cost

(v)(1)(A) The reasonable cost of any services shall be the cost actually incurred, excluding therefrom any part of incurred cost found to be unnecessary in the efficient delivery of needed health services, and shall be determined in accordance with regulations establishing the method or methods to be used, and the items to be included, in determining such costs for various types or classes of institutions, agencies, and services; except that in any case to which paragraph (2) or (3) applies, the amount of the payment determined under such paragraph with respect to the services involved shall be considered the reasonable cost of such services. In prescribing the

[1] P.L. 96-611, §1(a)(1)(A), redesignated paragraph (12) as paragraph (13), effective on, and applicable to services furnished on or after, July 1, 1981.

[2] P.L. 96-611, §1(a)(1)(A), redesignated paragraph (13) as paragraph (14), effective on, and applicable to services furnished on or after, July 1, 1981.

[3] P.L. 96-499, §933(c), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[4] As in original; "or" should be stricken.

[5] P.L. 97-35, §2121(c), struck out "detoxification facility,", effective with respect to services furnished in detoxification facilities for inpatient stays beginning on or after August 23, 1981.

[6] P.L. 97-248, §122(d)(1), inserted "hospice program,". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

regulations referred to in the preceding sentence, the Secretary shall consider, among other things, the principles generally applied by national organizations or established prepayment organizations (which have developed such principles) in computing the amount of payment, to be made by persons other than the recipients of services, to providers of services on account of services furnished to such recipients by such providers. Such regulations may provide for determination of the costs of services on a per diem, per unit, per capita, or other basis, may provide for using different methods in different circumstances, may provide for the use of estimates of costs of particular items or services, may provide for the establishment of limits on the direct or indirect overall incurred costs or incurred costs of specific items or services or groups of items or services to be recognized as reasonable based on estimates of the costs necessary in the efficient delivery of needed health services to individuals covered by the insurance programs established under this title, and may provide for the use of charges or a percentage of charges where this method reasonably reflects the costs. Such regulations shall (i) take into account both direct and indirect costs of providers of services (excluding therefrom any such costs, including standby costs, which are determined in accordance with regulations to be unnecessary in the efficient delivery of services covered by the insurance programs established under this title) in order that, under the methods of determining costs, the necessary costs of efficiently delivering covered services to individuals covered by the insurance programs established by this title will not be borne by individuals not so covered, and the costs with respect to individuals not so covered will not be borne by such insurance programs, and (ii) provide for the making of suitable retroactive corrective adjustments where, for a provider of services for any fiscal period, the aggregate reimbursement produced by the methods of determining costs proves to be either inadequate or excessive. (B) Such regulations in the case of extended care services furnished by proprietary facilities shall include provision for specific recognition of a reasonable return on equity capital, including necessary working capital, invested in the facility and used in the furnishing of such services, in lieu of other allowances to the extent that they reflect similar items. The rate of return recognized pursuant to the preceding sentence for determining the reasonable cost of any services furnished in any fiscal period shall not exceed one and one-half times the average of the rates of interest, for each of the months any part of which is included in such fiscal period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.

(C) Where a hospital has an arrangement with a medical school under which the faculty of such school provides services at such hospital, an amount not in excess of the reasonable cost of such services to the medical school shall be included in determining the reasonable cost to the hospital of furnishing services—

(i) for which payment may be made under part A, but only if[1]

[1]As in original. No punctuation provided.

(I) payment for such services as furnished under such arrangement would be made under part A to the hospital had such services been furnished by the hospital, and

(II) such hospital pays to the medical school at least the reasonable cost of such services to the medical school, or

(ii) for which payment may be made under part B, but only if such hospital pays to the medical school at least the reasonable cost of such services to the medical school.

(D) Where (i) physicians furnish services which are either inpatient hospital services (including services in conjunction with the teaching programs of such hospital) by reason of paragraph (7) of subsection (b) or for which entitlement exists by reason of clause (II) of section 1832(a)(2)(B)(i)[1] and (ii) such hospital (or medical school under arrangement with such hospital) incurs no actual cost in the furnishing of such services, the reasonable cost of such services shall (under regulations of the Secretary) be deemed to be the cost such hospital or medical school would have incurred had it paid a salary to such physicians rendering such services approximately equivalent to the average salary paid to all physicians employed by such hospital (or if such employment does not exist, or is minimal in such hospital, by similar hospitals in a geographic area of sufficient size to assure reasonable inclusion of sufficient physicians in development of such average salary).

(E)(i) Such regulations shall provide that any determination of reasonable cost with respect to services provided by hospital-based skilled nursing facilities shall be made on the basis of a single standard based on the reasonableness of costs incurred by free standing skilled nursing facilities, subject to such adjustments as the Secretary may deem appropriate.[2]

(ii)[3] Such regulations may, in the case of skilled nursing facilities in any State, provide for the uses[4] of rates, developed by the State in which such facilities are located, for the payment of the cost of skilled nursing facility services furnished under the State's plan approved under title XIX (and such rates may be increased by the Secretary on a class or size of institution or on a geographical basis by a percentage factor not in excess of 10 percent to take into account determinable items or services or other requirements under this title not otherwise included in the computation of such State rates), if the Secretary finds that such rates are reasonably related to (but not necessarily limited to) analyses undertaken by such State of costs of care in comparable facilities in such State.[5]

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[1] As in original. There should be punctuation to show end of clause (i).

[2] P.L. 97-248, §102(a)(3), inserted clause (E)(i), effective with respect to cost reporting periods beginning on or after October 1, 1982.
P.L. 98-21, §605(a), amended that effective date by striking out "1982" and substituting "1983", effective April 20, 1983.

[3] P.L. 97-248, §102(a)(2), struck out "(E)" and substituted "(ii)", effective with respect to cost reporting periods beginning on or after October 1, 1982.
P.L. 98-21, §605(a), amended that effective date by striking out "1982" and substituting "1983", effective April 20, 1983.

[4] As in original. Should be "use".

[5] P.L. 97-248, §102(a)(1), struck out "; except that the foregoing provisions of this subparagraph shall not apply to any skilled nursing facility in such State if—", clauses (i) and (ii), and the

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1121(a) in accordance with the uniform reporting system (established under such section) for that type of provider.

(G)(i) In any case in which a hospital provides inpatient services to an individual that would constitute post-hospital extended care services if provided by a skilled nursing facility and a quality control and peer review organization[1] (or, in the absence of such a qualified organization, the Secretary or such agent as the Secretary may designate[2]) determines that inpatient hospital services for the individual are not medically necessary but post-hospital extended care services for the individual are medically necessary and such extended care services are not otherwise available to the individual (as determined in accordance with criteria established by the Secretary) at the time of such determination, payment for such services provided to the individual shall continue to be made under this title at the payment rate described in clause (ii) during the period in which—

(I) such post-hospital extended care services for the individual are medically necessary and not otherwise available to the individual (as so determined),

(II) inpatient hospital services for the individual are not medically necessary, and

(III) the individual is entitled to have payment made for post-hospital extended care services under this title,

except that if the Secretary determines that there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital[3], such payment shall be made (during such period) the amount otherwise payable under part A with respect to[4] inpatient hospital services.

(ii)(I) Except as provided in subclause (II), the payment rate referred to in clause (i) is a rate equal to the estimated adjusted State-wide average rate per patient-day paid for services provided in skilled nursing facilities under the State plan approved under title XIX for the State in which such hospital is located, or, if the State in which the hospital is located does not have a State plan approved under title XIX, the estimated adjusted State-wide average allowable

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concluding sentence of subparagraph (E), and substituted a period, effective with respect to cost reporting periods beginning on or after October 1, 1982.

P.L. 98-21, §605(a), amended that effective date by striking out "1982" and substituting "1983", effective April 20, 1983.

See P.L. 98-21, "Social Security Amendments of 1983", §605(b), with respect to a study and report to Congress relating to hospital-based skilled nursing facilities.

[1]P.L. 97-248, §148(b), struck out "Professional Standards Review Organization" and substituted "quality control and peer review organization", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[2]P.L. 97-35, §2114, struck out "an organization or agency with review responsibility as is otherwise provided for under part A of title XI" and substituted "the Secretary or such agent as the Secretary may designate", effective August 13, 1981.

[3]P.L. 97-35, §2102(a)(1), struck out "the hospital had (during the immediately preceding calendar year) an average daily occupancy rate of 80 percent or more" and substituted "there is not an excess of hospital beds in such hospital and (subject to clause (iv)) there is not an excess of hospital beds in the area of such hospital", effective with respect to services provided on or after September 1, 1981.

[4]P.L. 98-21, §602(d)(1), struck out "on the basis of [*] the reasonable cost of" and substituted "the amount otherwise payable under part A with respect to", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[*]As in original; "on the basis of" possibly should be restored.

costs per patient-day for extended care services under this title in that State.

(II) If a hospital has a unit which is a skilled nursing facility, the payment rate referred to in clause (i) for the hospital is a rate equal to the lesser of the rate described in subclause (I) or the allowable costs in effect under this title for extended care services provided to patients of such unit.

(iii) Any day on which an individual receives inpatient services for which payment is made under this subparagraph shall, for purposes of this Act (other than this subparagraph), be deemed to be a day on which the individual received inpatient hospital services.

(iv) In determining under clause (i), in the case of a public hospital, whether or not there is an excess of hospital beds in the area of such hospital, such determination shall be made on the basis of only the public hospitals (including the hospital) which are in the area of the hospital and which are under common ownership with that hospital.[1]

(H) In determining such reasonable cost with respect to home health agencies, the Secretary may not include—

(i) any costs incurred in connection with bonding or establishing an escrow account by any such agency as a result of the financial security requirement described in subsection (o)(7);

(ii) in the case of home health agencies to which the financial security requirement described in subsection (o)(7) applies, any costs attributed to interest charged such an agency in connection with amounts borrowed by the agency to repay overpayments made under this title to the agency, except that such costs may be included in reasonable cost if the Secretary determines that the agency was acting in good faith in borrowing the amounts;

(iii) in the case of contracts entered into by a home health agency after the date of the enactment of this subparagraph[2] for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract[3] which is entered into for a period exceeding five years[4]; and

(iv) in the case of contracts entered into by a home health agency before the date of the enactment of this subparagraph[5] for the purpose of having services furnished for or on behalf of such agency, any cost incurred by such agency pursuant to any such contract, which determines the amount payable by the home health agency on the basis of a percentage of the agency's reimbursement or claim for reimbursement for services furnished by the agency, to the extent that such cost exceeds the reasonable value of the services furnished on behalf of such agency.[6]

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[1]P. L. 96-499, §902(a)(1), added subparagraph (G), effective on the date of which final regulations, promulgated by the Secretary to implement this amendment, are first issued; and those regulations shall be issued not later than June 1, 1981.

P.L. 97-35, §2102(a)(2), amended clause (iv) in its entirety, effective with respect to services provided on or after September 1, 1981.

[2]December 5, 1980 [P.L. 96-499; 94 Stat. 2599].

[3]P.L. 97-248, §109(b)(1), struck out "(I)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §109(c), p. 788.

[4]P.L. 97-248, §109(b)(1), struck out ", or" and subdivision (II). For the effective date, see P.L. 97-248, §109(c), p. 788.

[5]December 5, 1980 [P.L. 96-499; 94 Stat. 2599].

[6]P.L. 96-499, §930(p), added subparagraph (H), effective with respect to services furnished on or after July 1, 1981.

(I) In determining such reasonable cost, the Secretary may not include any costs incurred by a provider with respect to any services furnished in connection with matters for which payment may be made under this title and furnished pursuant to a contract between the provider and any of its subcontractors which is entered into after the date of the enactment of this subparagraph[1] and the value or cost of which is $10,000 or more over a twelve-month period unless the contract contains a clause to the effect that—

(i) until the expiration of four years after the furnishing of such services pursuant to such contract, the subcontractor shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the contract, and books, documents and records of such subcontractor that are necessary to certify the nature and extent of such costs, and

(ii) if the subcontractor carries out any of the duties of the contract through a subcontract, with a value or cost of $10,000 or more over a twelve-month period, with a related organization, such subcontract shall contain a clause to the effect that until the expiration of four years after the furnishing of such services pursuant to such subcontract, the related organization shall make available, upon written request to the Secretary, or upon request to the Comptroller General, or any of their duly authorized representatives, the subcontract, and books, documents and records of such organization that are necessary to verify the nature and extent of such costs.

The Secretary shall prescribe in regulation criteria and procedures which the Secretary shall use in obtaining access to books, documents, and records under clauses required in contracts and subcontracts under this subparagraph.[2]

(J) Such regulations may not provide for any inpatient routine salary cost differential as a reimbursable cost for hospitals and skilled nursing facilities.[3]

(K) The Secretary shall issue regulations that provide, to the extent feasible, for the establishment of limitations on the amount of any costs or charges that shall be considered reasonable with respect to services provided on an outpatient basis by hospitals (other than bona fide emergency services provided in an emergency room) or clinics (other than rural health clinics), which are reimbursed on a cost basis or on the basis of cost related charges, and by physicians utilizing such outpatient facilities. Such limitations shall be reasonably related to the charges in the same area for similar services provided in physicians' offices. Such regulations shall provide for exceptions to such limitations in cases where similar services are not generally available in physicians' offices in the area to individuals entitled to benefits under this title.[4]

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[1]December 5, 1980 [P.L. 96-499; 94 Stat. 2599].

[2]P.L. 97-248, §127, redesignated P.L. 96-499, §952 (which had added subparagraph (I)) as §952(a) and added §952(b).

See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §952(b), with respect to regulations regarding access to books and records.

[3]P.L. 97-35, §2141(a), added subparagraph (J), [applicable to cost reporting periods ending after September 30, 1981; in the case of a cost reporting period beginning before October 1, 1981, any reduction in payments shall be imposed only in proportion to the part of the period that occurs after September 30, 1981].

P.L. 97-248, §103(a), amended subparagraph (J) in its entirety. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §103(b), p. 788.

[4]P.L. 97-35, §2142(a), added subparagraph (K), effective August 13, 1981.

(L)[1] The Secretary, in determining the amount of the payments that may be made under this title with respect to services furnished by home health agencies, may not recognize as reasonable (in the efficient delivery of such services) costs for the provision of such services by an agency to the extent these costs exceed (on the aggregate for the agency) the 75th percentile of such costs per visit for free standing[2] home health agencies, or, in the judgment of the Secretary, such lower percentile or such comparable or lower limit (based on or related to the mean of the costs of such agencies or otherwise) as the Secretary may determine. The Secretary may provide for such exemptions and exceptions to such limitation as he deems appropriate.[3]

(M) Such regulations shall provide that costs respecting care provided by a provider of services, pursuant to an assurance under title VI or XVI of the Public Health Service Act[4] that the provider will make available a reasonable volume of services to persons unable to pay therefor, shall not be allowable as reasonable costs.[5]

(N) In determining such reasonable costs, costs incurred for activities directly related to influencing employees respecting unionization may not be included.[6]

(2)(A) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations more expensive than semi-private accommodations, the amount taken into account for purposes of payment under this title with respect to such services may not exceed the amount that would be taken into account with respect to[7] such services if furnished in such semi-private accommodations unless the more expensive accommodations were required for medical reasons.

(B) Where a provider of services which has an agreement in effect under this title furnishes to an individual items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under part A or part B, as the case may be, the Secretary shall take into account for purposes of payment to such provider of services only[8] the items or services with

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[1]P.L. 97-35, §2143(a), added subparagraph (L), and P.L. 97-35, §2144(a), redesignated that subparagraph (L) as clause (L)(i), effective with respect to cost reporting periods ending after September 30, 1981; in the case of a cost reporting period beginning before October 1, 1981, any reduction in payments shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.

P.L. 97-248, §101(a)(2), struck out clause (i) and "(ii)", effective with respect to cost reporting periods beginning on or after October 1, 1982.

[2]P.L. 97-248, §105(a), inserted "free standing", effective with respect to cost reporting periods beginning on or after September 3, 1982.

[3]P.L. 97-35, §2144(a), added clause (ii) [now subparagraph (L)], effective with respect to cost reporting periods ending after September 30, 1981; in the case of a cost reporting period beginning before October 1, 1981, any reduction in payments shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.

[4]P.L. 78-410.

[5]P.L. 97-248, §106(a), added subparagraph (M), effective with respect to any costs incurred under Title XVIII, except that it shall not apply to costs which have been allowed prior to September 3, 1982, pursuant to the final court order affirmed by a United States Court of Appeals.

[6]P.L. 97-248, §107(a), added subparagraph (N), effective with respect to costs incurred after September 3, 1982.

[7]P.L. 98-21, §602(d)(2), struck out "an amount equal to the reasonable cost of" and substituted "the amount that would be taken into account with respect to", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[8]P.L. 98-21, §602(d)(3), struck out "the equivalent of the reasonable cost of", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

respect to which such payment may be made.[1]

(3) If the bed and board furnished as part of inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services is in accommodations other than, but not more expensive than, semi-private[2] accommodations and the use of such other accommodations rather than semi-private[3] accommodations was neither at the request of the patient nor for a reason which the Secretary determines is consistent with the purposes of this title, the amount of the payment with respect to such bed and board under part A shall be the amount otherwise payable under this title for such bed and board furnished in semiprivate[4] accommodations[5] minus the difference between the charge customarily made by the hospital or skilled nursing facility for bed and board in semi-private[6] accommodations and the charge customarily made by it for bed and board in the accommodations furnished.

(4) If a provider of services furnishes items or services to an individual which are in excess of or more expensive than the items or services determined to be necessary in the efficient delivery of needed health services and charges are imposed for such more expensive items or services under the authority granted in section 1866(a)(2)(B)(ii), the amount of payment with respect to such items or services otherwise due such provider in any fiscal period shall be reduced to the extent that such payment plus such charges exceed the cost actually incurred for such items or services in the fiscal period in which such charges are imposed.

(5)(A) Where physical therapy services, occupational therapy services, speech therapy services, or other therapy services or services of other health-related personnel (other than physicians) are furnished under an arrangement with a provider of services or other organization, specified in the first sentence of section 1861(p) the amount included in any payment to such provider or other organization under this title as the reasonable cost of such services (as furnished under such arrangements) shall not exceed an amount equal to the salary which would reasonably have been paid for such services (together with any additional costs that would have been incurred by the provider or other organization) to the person performing them if they had been performed in an employment relationship with such provider or other organization (rather than under such arrangement) plus the cost of such other expenses (including a reasonable allowance for traveltime and other reasonable types of expense related to any differences in acceptable methods of organization for the provision of such therapy) incurred by such person, as the Secretary may in regulations determine to be appropriate.

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[1] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §111, with respect to elimination of private room subsidy.

[2] As in original.

[3] As in original.

[4] As in original.

[5] P.L. 98-21, §602(d)(4), struck out "reasonable cost of such bed and board furnished in semiprivate accommodations (determined pursuant to paragraph (1))" and substituted "amount otherwise payable under this title for such bed and board furnished in semiprivate accommodations", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. Executed as if §602(d)(4) reads "furnished in semi-private" instead of "furnished in semiprivate".

[6] As in original.

(B) Notwithstanding the provisions of subparagraph (A), if a provider of services or other organization specified in the first sentence of section 1861(p) requires the services of a therapist on a limited part-time basis, or only to perform intermittent services, the Secretary may make payment on the basis of a reasonable rate per unit of service, even though such rate is greater per unit of time than salary related amounts, where he finds that such greater payment is, in the aggregate, less than the amount that would have been paid if such organization had employed a therapist on a full- or part-time salary basis.

(6) For purposes of this subsection, the term "semi-private accommodations" means two-bed, three-bed, or four-bed accommodations.

(7)(A)[1] For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(B) For further limitations on reasonable cost and determination of payment amounts for operating costs of inpatient hospital services and waivers for certain States, see section 1886.[2]

(C) For provisions restricting payment for provider-based physicians' services and for payments under certain percentage arrangements[3], see section 1887.[4]

Arrangements for Certain Services

(w)(1) The term "arrangements" is limited to arrangements under which receipt of payment by the hospital, skilled nursing facility, home health agency, or hospice program[5] (whether in its own right or as agent), with respect to services for which an individual is entitled to have payment made under this title, discharges the liability of such individual or any other person to pay for the services.

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of title XI of the Social Security Act with respect to services furnished by a hospital to patients insured under part A of this title or entitled to have payment made for such services under part B of this title or under a State plan approved under title[6] XIX, by a quality control and peer review organization[7] designated for the area in which such hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital and such organization under which such hospital is obligated to pay to such organization, as a condition of receiving payment for hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations

[1] P.L. 97-248, §101(d), inserted "(A)", effective September 3, 1982.

[2] P.L. 97-248, §101(d), added subparagraph (B), effective September 3, 1982.

[3] P.L. 97-248, §109(b)(2), inserted "and for payments under certain percentage arrangements". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §109(c), p. 788.

[4] P.L. 97-248, §108(2)(sic), added subparagraph (C), effective September 3, 1982.

[5] P.L. 97-248, §122(d)(2), struck out "or home health agency" and substituted "home health agency, or hospice program". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[6] P.L. 97-35, §2193(c)(9), struck out "V or". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194, p. 784.

[7] P.L. 97-248, §148(b), struck out "Professional Standards Review Organization" and substituted "quality control and peer review organization", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital to such patients.

State and United States

(x) The terms "State" and "United States" have the meaning given to them by subsections (h) and (i), respectively, of section 210.

Post-Hospital Extended Care in Christian Science Skilled Nursing Facilities

(y)(1) The term "skilled nursing facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only (except for purposes of subsection (a)(2)) with respect to items and services ordinarily furnished by such an institution to inpatients, and payment may be made with respect to services provided by or in such an institution only to such extent and under such conditions, limitations, and requirements (in addition to or in lieu of the conditions, limitations, and requirements otherwise applicable) as may be provided in regulations.

(2) Notwithstanding any other provision of this title, payment under part A may not be made for services furnished an individual in a skilled nursing facility to which paragraph (1) applies unless such individual elects, in accordance with regulations, for a spell of illness to have such services treated as post-hospital extended care services for purposes of such part; and payment under part A may not be made for post-hospital extended care services—

(A) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) applies after—

(i) such services have been furnished to him in such a facility for 30 days during such spell, or

(ii) such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph does not apply; or

(B) furnished an individual during such spell of illness in a skilled nursing facility to which paragraph (1) does not apply after such services have been furnished to him during such spell in a skilled nursing facility to which such paragraph applies.

(3) The amount payable under part A for post-hospital extended care services furnished an individual during any spell of illness in a skilled nursing facility to which paragraph (1) applies shall be reduced by a coinsurance amount equal to one-eighth of the inpatient hospital deductible for each day before the 31st day on which he is furnished such services in such a facility during such spell (and the reduction under this paragraph shall be in lieu of any reduction under section 1813(a)(3)).

(4) For purposes of subsection (i), the determination of whether services furnished by or in an institution described in paragraph (1) constitute post-hospital extended care services shall be made in accordance with and subject to such conditions, limitations, and requirements as may be provided in regulations.

Institutional Planning

(z) An overall plan and budget of a hospital, skilled nursing facility, comprehensive outpatient rehabilitation facility,[1] or home health agency shall be considered sufficient if it—

(1) provides for an annual operating budget which includes all anticipated income and expenses related to items which would, under generally accepted accounting principles, be considered income and expense items (except that nothing in this paragraph shall require that there be prepared, in connection with any budget, an item-by-item identification of the components of each type of anticipated expenditure or income);

(2)(A)[2] provides for a capital expenditures plan for at least a 3-year period (including the year to which the operating budget described in subparagraph[3] (1) is applicable) which includes and identifies in detail the anticipated sources of financing for, and the objectives of, each anticipated expenditure in excess of $600,000 (or such lesser amount as may be established by the State under section 1122(g)(1) in which the hospital is located)[4] related to the acquisition of land, the improvement of land, buildings, and equipment, and the replacement, modernization, and expansion of the buildings and equipment which would, under generally accepted accounting principles, be considered capital items;

(B) provides that such plan is submitted to the agency designated under section 1122(b), or if no such agency is designated, to the appropriate health planning agency in the State (but this subparagraph shall not apply in the case of a facility exempt from review under section 1122 by reason of section 1122(j));[5]

(3) provides for review and updating at least annually; and

(4) is prepared, under the direction of the governing body of the institution or agency, by a committee consisting of representatives of the governing body, the administrative staff, and the medical staff (if any) of the institution or agency.

Rural Health Clinic Services[6]

(aa)(1) The term "rural health clinic services" means—

(A) physicians' services and such services and supplies as are covered under section 1861(s)(2)(A) if furnished as an incident to a physician's professional service and items and services described in section 1861(s)(10)[7],

(B) such services furnished by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service as would otherwise be covered if

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[1] P.L. 96-499, §933(d), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[2] P.L. 98-21, §607(d), inserted "(A)", effective April 20, 1983.

[3] As in original. Should be "paragraph".

[4] P.L. 98-21, §607(b)(2), struck out "$100,000" and substituted "$600,000 (or such lesser amount as may be established by the State under section 1122(g)(1) in which the hospital is located)", effective April 20, 1983.

[5] P.L. 98-21, §607(d), added subparagraph (B), effective April 20, 1983.

[6] P.L. 95-210, §1(d), added subsection (aa), effective with respect to services rendered on or after March 1, 1978.

See P.L. 95-210, [Social Security—Rural Health Clinic Services], §1(e), with respect to private, nonprofit health care clinics.

[7] P.L. 96-611, §1(b)(3), inserted "and items and services described in section 1861(s)(10)", effective on, and applicable to services furnished on or after, July 1, 1981.

furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term "rural health clinic" means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1866, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this title;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and

biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has appropriate procedures for review of ultilization[1] of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(J) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this title, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 1302(7) of the Public Health Service Act[2] or (II) as a health manpower shortage area described in section 332(a)(1)(A) of that Act[3] because of its shortage of primary medical care manpower, (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this title, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1833, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this title or title XIX and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this title and title XIX, as still satisfying the requirement of such clause.

(3) The term "physician assistant" and the term "nurse practitioner" mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

[(bb) Repealed.[4]]

Comprehensive Outpatient Rehabilitation Facility Services[5]

(cc)(1) The term "comprehensive outpatient rehabilitation facility services" means the following items and services furnished by a physician or other qualified professional personnel (as defined in regulations by the Secretary) to an individual who is an outpatient of a comprehensive outpatient rehabilitation facility under a plan (for

[1] As in original. Should be "utilization".
[2] P.L. 78-410.
[3] P.L. 78-410.
[4] P.L. 96-499, §931(d), added subsection (bb).
P.L. 97-35, §2121(d), repealed subsection (bb), effective with respect to services furnished in detoxification facilities for inpatient stays beginning on or after August 23, 1981.
[5] P.L. 96-499, §933(e), added subsection (cc), effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

furnishing such items and services to such individual) established and periodically reviewed by a physician--

(A) physicians' services;

(B) physical therapy, occupational therapy, speech pathology services, and respiratory therapy;

(C) prosthetic and orthotic devices, including testing, fitting, or training in the use of prosthetic and orthotic devices;

(D) social and psychological services;

(E) nursing care provided by or under the supervision of a registered professional nurse;

(F) drugs and biologicals which cannot, as determined in accordance with regulations, be self administered[1];

(G) supplies, appliances, and equipment, including the purchase or rental of equipment; and

(H) such other items and services as are medically necessary for the rehabilitation of the patient and are ordinarily furnished by comprehensive outpatient rehabilitation facilities,

excluding, however, any item or service if it would not be included under subsection (b) if furnished to an inpatient[2] of a hospital.

(2) The term "comprehensive outpatient rehabilitation facility" means a facility which—

(A) is primarily engaged in providing (by or under the supervision of physicians) diagnostic, therapeutic, and restorative services to outpatients for the rehabilitation of injured, disabled, or sick persons;

(B) provides at least the following comprehensive outpatient rehabilitation services: (i) physicians' services (rendered by physicians, as defined in section 1861(r)(1), who are available at the facility on a full- or part-time basis); (ii) physical therapy; and (iii) social or psychological services;

(C) maintains clinical records on all patients;

(D) has policies established by a group of professional personnel (associated with the facility), including one or more physicians defined in subsection (r)(1) to govern the comprehensive outpatient rehabilitation services it furnishes, and provides for the carrying out of such policies by a full- or part-time physician referred to in subparagraph (B)(i);

(E) has a requirement that every patient must be under the care of a physician;

(F) in the case of a facility in any State in which State or applicable local law provides for the licensing of facilities of this nature (i) is licensed pursuant to such law, or (ii) is approved by the agency of such State or locality, responsible for licensing facilities of this nature, as meeting the standard establishment[3] for such licensing;

(G) has in effect a utilization review plan in accordance with regulations prescribed by the Secretary;

(H) has in effect an overall plan and budget that meets the requirements of subsection (z); and

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[1]As in original. Should be "self-administered".

[2]P.L. 97-248, §128(a)(1), struck out "outpatient" and substituted "inpatient". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §128(e)(2), p. 791.

[3]As in original. Should be "established".

(I) meets such other conditions of participation as the Secretary may find necessary in the interest of the health and safety of individuals who are furnished services by such facility, including conditions concerning qualifications of personnel in these facilities.

Hospice Care; Hospice Program[1]

(dd)(1) The term "hospice care" means the following items and services provided to a terminally ill individual by, or by others under arrangements made by, a hospice program under a written plan (for providing such care to such individual) established and periodically reviewed by the individual's attending physician and by the medical director (and by the interdisciplinary group described in paragraph (2)(B)) of the program—

(A) nursing care provided by or under the supervision of a registered professional nurse,

(B) physical or occupational therapy or speech-language pathology,

(C) medical social services under the direction of a physician,

(D)(i) services of a home health aide who has successfully completed a training program approved by the Secretary and (ii) homemaker services,

(E) medical supplies (including drugs and biologicals) and the use of medical appliances, while under such a plan,

(F) physicians' services,

(G) short-term inpatient care (including both respite care and procedures necessary for pain control and acute and chronic symptom management) in an inpatient facility meeting such conditions as the Secretary determines to be appropriate to provide such care, but such respite care may be provided only on an intermittent, nonroutine, and occasional basis and may not be provided consecutively over longer than five days, and[2]

(H) counseling (including dietary counseling) with respect to care of the terminally ill individual and adjustment to his death.

The care and services described in subparagraphs (A) and (D) may be provided on a 24-hour, continuous basis only during periods of crisis (meeting criteria established by the Secretary) and only as necessary to maintain the terminally ill individual at home.

(2) The term "hospice program" means a public agency or private organization (or a subdivision thereof) which—

(A)(i) is primarily engaged in providing the care and services described in paragraph (1) and makes such services available (as needed) on a 24-hour basis and which also provides bereavement counseling for the immediate family of terminally ill individuals,

(ii) provides for such care and services in individuals' homes, on an outpatient basis, and on a short-term inpatient basis, directly or under arrangements made by the agency or organization, except that—

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[1]P.L. 97-248, §122(d)(3), added subsection (dd). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

P.L. 97-448, §309(b)(9), changed the typeface on this heading, effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, §122(h)(1), p. 791.

[2]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(k), with respect to waivers of limitations.

(I) the agency or organization must routinely provide directly substantially all of each of the services described in subparagraphs (A), (C), (F), and (H) of paragraph (1), and

(II) in the case of other services described in paragraph (1) which are not provided directly by the agency or organization, the agency or organization must maintain professional management responsibility for all such services furnished to an individual, regardless of the location or facility in which such services are furnished; and

(iii) provides assurances satisfactory to the Secretary that the aggregate number of days of inpatient care described in paragraph (1)(G) provided in any 12-month period to individuals who have an election in effect under section 1812(d) with respect to that agency or organization does not exceed 20 percent of the aggregate number of days during that period on which such elections for such individuals are in effect;[1]

(B) has an interdisciplinary group of personnel which—

(i) includes at least—

(I) one physician (as defined in subsection (r)(1)),

(II) one registered professional nurse, and

(III) one social worker,

employed by the agency or organization, and also includes at least one pastoral or other counselor,

(ii) provides (or supervises the provision of) the care and services described in paragraph (1), and

(iii) establishes the policies governing the provision of such care and services;

(C) maintains central clinical records on all patients;

(D) does not discontinue the hospice care it provides with respect to a patient because of the inability of the patient to pay for such care;

(E)(i) utilizes volunteers in its provision of care and services in accordance with standards set by the Secretary, which standards shall ensure a continuing level of effort to utilize such volunteers, and (ii) maintains records on the use of these volunteers and the cost savings and expansion of care and services achieved through the use of these volunteers;

(F) in the case of an agency or organization in any State in which State or applicable local law provides for the licensing of agencies or organizations of this nature, is licensed pursuant to such law; and

(G) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are provided care and services by such agency or organization.

(3)(A) An individual is considered to be "terminally ill" if the individual has a medical prognosis that the individual's life expectancy is 6 months or less.

(B) The term "attending physician" means, with respect to an individual, the physician (as defined in subsection (r)(1)), who may be employed by a hospice program, whom the individual identifies as having the most significant role in the determination and delivery of

[1]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(k), with respect to waivers of limitations.

medical care to the individual at the time the individual makes an election to receive hospice care.

(4)(A) An entity which is certified as a provider of services other than a hospice program shall be considered, for purposes of certification as a hospice program, to have met any requirements under paragraph (2) which are also the same requirements for certification as such other type of provider. The Secretary shall coordinate surveys for determining certification under this title so as to provide, to the extent feasible, for simultaneous surveys of an entity which seeks to be certified as a hospice program and as a provider of services of another type.

(B) Any entity which is certified as a hospice program and as a provider of another type shall have separate provider agreements under section 1866 and shall file separate cost reports with respect to costs incurred in providing hospice care and in providing other services and items under this title.

EXCLUSIONS FROM COVERAGE

SEC. 1862. [42 U.S.C. 1395y] (a) Notwithstanding any other provision of this title, no payment may be made under part A or part B for any expenses incurred for items or services—

(1)(A) which, except for items and services described in subparagraph (B), (C), or (D)[1], are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member,

(B) in the case of items and services described in section 1861(s)(10), which are not reasonable and necessary for the prevention of illness,

(C) in the case of hospice care, which are not reasonable and necessary for the palliation or management of terminal illness,[2] and

(D) in the case of clinical care items and services provided with the concurrence of the Secretary and with respect to research and experimentation conducted by, or under contract with, the Prospective Payment Assessment Commission or the Secretary, which are not reasonable and necessary to carry out the purposes of section 1886(e)(6);[3]

(2) for which the individual furnished such items or services has no legal obligation to pay, and which no other person (by reason of such individual's membership in a prepayment plan or otherwise) has a legal obligation to provide or pay for;

(3) which are paid for directly or indirectly by a governmental entity (other than under this Act and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1861(aa)(1), and in such other cases as the Secretary may specify;

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[1] P.L. 98-21, §601(f)(1), struck out "(B) or (C)" and substituted "(B), (C), or (D)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2] P.L. 97-248, §122(f)(1), amended paragraph (1) in its entirety. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[3] P.L. 98-21, §601(f)(4), added subparagraph (D), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(4) which are not provided within the United States (except for inpatient hospital services furnished outside the United States under the conditions described in section 1814(f) and, subject to such conditions, limitations, and requirements as are provided under or pursuant to this title, physicians' services and ambulance services furnished an individual in conjunction with such inpatient hospital services but only for the period during which such inpatient hospital services were furnished);

(5) which are required as a result of war, or of an act of war, occurring after the effective date of such individual's current coverage under such part;

(6) which constitute personal comfort items (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))[1];

(7) where such expenses are for routine physical checkups, eyeglasses or eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, procedures performed (during the course of any eye examination) to determine the refractive state of the eyes, hearing aids or examinations therefor, or immunizations (except as otherwise allowed under section 1861(s)(10) and paragraph (1)(B)[2])[3];

(8) where such expenses are for orthopedic shoes or other supportive devices for the feet;

(9) where such expenses are for custodial care (except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))[4];

(10) where such expenses are for cosmetic surgery or are incurred in connection therewith, except as required for the prompt repair of accidental injury or for improvement of the functioning of a malformed body member;

(11) where such expenses constitute charges imposed by immediate relatives of such individual or members of his household;

(12) where such expenses are for services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting teeth, except that payment may be made under part A in the case of inpatient hospital services in connection with the provision of such dental services if the individual, because of his underlying medical condition and clinical status or because of the severity of the dental procedure,[5],[6] requires hospitalization in connection with the provision of such services;

(13) where such expenses are for—

(A) the treatment of flat foot conditions and the prescription of supportive devices therefor,

(B) the treatment of subluxations of the foot, or

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[1]P.L. 97-248, §122(f)(2), inserted "(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2]P.L. 97-248, §122(f)(3), inserted "(B)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[3]P.L. 96-611, §1(a)(3)(B), inserted "(except as otherwise allowed under section 1861(s)(10) and paragraph (1))", effective on, and applicable to services furnished on or after, July 1, 1981.

[4]P.L. 97-248, §122(f)(4), inserted "(except, in the case of hospice care, as is otherwise permitted under paragraph (1)(C))". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[5]P.L. 96-499, §936(c), inserted "or because of the severity of the dental procedure,", effective with respect to services provided on or after July 1, 1981.

[6]As in original. One comma should be stricken.

(C) routine foot care (including the cutting or removal of corns[1] or calluses, the trimming of nails, and other routine hygienic care); or

(14) which are other than physicians' services (as defined in regulations promulgated specifically for purposes of this paragraph) and which are furnished to an individual who is an inpatient of a hospital by an entity other than the hospital, unless the services are furnished under arrangements (as defined in section 1861(w)(1)) with the entity made by the hospital.[2]

(b)(1)[3] Payment under this title may not be made with respect to any item or service to the extent that payment has been made, or can reasonably be expected to be made (as determined in accordance with regulations), with respect to such item or service, under a workmen's compensation law or plan of the United States or a State or under an automobile or liability insurance policy or plan (including a self-insured plan) or under no fault insurance. Any payment under this title with respect to any item or service shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under such a law[4], policy, plan, or insurance. The Secretary may waive the provisions of this subsection in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.[5]

(2)(A) In the case of an individual who is entitled to benefits under part A or is eligible to enroll under part B solely by reason of section 226A, payment under this title may not be made, except as provided in subparagraph (B), with respect to any item or service furnished during the period described in subparagraph (C) to the extent that payment with respect to expenses for such item or service (i) has been made under any group health plan (as defined in section 162(i)(2)[6] of the Internal Revenue Code of 1954[7]) or (ii) the Secretary determines will be made under such a plan as promptly as would otherwise be the case if payment were made by the Secretary under this title.

(B) Any payment under this title with respect to any item or service furnished[8] to an individual described in subparagraph (A) during the period described in subparagraph (C) shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under a plan described in

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[1]P.L. 96-499, §939(a), struck out ", warts,", effective with respect to services furnished on or after July 1, 1981.

[2]P.L. 98-21, §602(e)(3), added paragraph (14), effective October 1, 1983.

See P.L. 98-21, "Social Security Amendments of 1983", §602(k), with respect to certain conditions under which the Secretary may waive the requirements of this provision.

[3]P.L. 97-35, §2146(a), inserted "(1)", effective October 1, 1981.

[4]P.L. 97-248, §128(a)(2), struck out "or plan". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §128(e)(2), p. 791.

[5]See 38 U.S.C. 5053(d) with respect to care or service furnished by a Veterans' Administration facility to a Title XVIII beneficiary who is not eligible for Veterans' Administration benefits.

See P.L. 94-581, "Veterans Omnibus Health Care Act of 1976", §115(c), with respect to the report to Congress required with respect to that Veterans' Administration care and service.

[6]P.L. 97-248, §128(a)(3), struck out "(h)(2)" and substituted "(i)(2)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §128(e)(2), p. 791.

[7]P.L. 83-591.

[8]P.L. 97-248, §128(a)(4), inserted "furnished". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §128(e)(2), p. 791.

subparagraph (A). The Secretary may waive the provisions of this subparagraph in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(C) The provisions of subparagraphs (A) and (B) shall apply to an individual only during the 12-month period which begins with the earlier of—

(i) the month in which a regular course of renal dialysis is initiated, or

(ii) in the case of an individual who receives a kidney transplant, the first month in which he would be eligible for benefits under this title (if he had filed an application for such benefits) under the provisions of section 226A(b)(1)(B).

(D) Where payment for an item or service under such plan is less than the amount of the charge for such item or service, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of such charge, but—

(i) such payment under this title may not exceed an amount which would be payable under this title for such item or service in the absence of such group health plan; and

(ii) such payment under this title, when combined with the amount payable under such plan, may not exceed the combined amount which would have been payable under this title and such plan if this paragraph were not in effect.[1]

(3)(A)(i) Payment under this title may not be made, except as provided in clause (ii), with respect to any item or service furnished in any month[2] during the period described in clause (iii) to an individual who is over 64 but under 70 years of age during any part of such month[3] (or to the spouse of such individual, if the spouse is over 64 but under 70 years of age during any part of such month[4]) who is employed at the time such item or service is furnished to the extent that payment with respect to expenses for such item or service has been made, or can reasonably be expected to be made, under a group health plan (as defined in clause (iv)) under which such individual is covered by reason of such employment.

(ii) Any payment under this title with respect to any item or service during the period described in clause (iii) shall be conditioned on reimbursement to the appropriate Trust Fund established by this title when notice or other information is received that payment for such item or service has been made under a group health plan. The Secretary may waive the provisions of this clause in the case of an individual claim if he determines that the probability of recovery or amount involved in such claim does not warrant the pursuing of the claim.

(iii) The provisions of clauses (i) and (ii) shall apply to an individual only for the period beginning with the month in which such individual becomes entitled to benefits under this title under section 226(a)

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[1] P.L. 97-35, §2146(a), added paragraph (2), effective October 1, 1981.

[2] P.L. 97-448, §309(b)(10)(A), inserted "in any month", effective with respect to items and services furnished on or after January 1, 1983, as if it had been included originally in P.L. 97-248.

[3] P.L. 97-448, §309(b)(10)(B), inserted "during any part of such month", effective with respect to items and services furnished on or after January 1, 1983, as if it had been included originally in P.L. 97-248.

[4] P.L. 97-448, §309(b)(10)(B), inserted "during any part of such month", effective with respect to items and services furnished on or after January 1, 1983, as if it had been included originally in P.L. 97-248.

and ending with the month in which such individual attains the age of 70 and shall not include any month for which the individual would, upon application, be entitled to benefits under section 226A.

(iv) For purposes of this paragraph, the term "group health plan" has the meaning given to such term in section 162(i)(2) of the Internal Revenue Code of 1954[1].

(B) Where payment for an item or service under a group health plan is less than the amount of the charge for such item or service, payment may be made under this title (without regard to deductibles and coinsurance under this title) for the remainder of such charge, but—

(i) such payment under this title may not exceed an amount which would be payable under this title for such item or service in the absence of such group health plan; and

(ii) such payment under this title, when combined with the amount payable under such plan, may not exceed—

(I) in the case of an item or service payment for which is determined under this title on the basis of reasonable cost (or other cost-related basis) or under section 1886, the amount which would be payable under this title on such basis; and

(II) in the case of an item or service for which payment is authorized under this title on another basis, the greater of—

(a) the amount which would be payable under the group health plan (without regard to deductibles and coinsurance under such plan), or

(b) the reasonable charge or other amount which would be payable under this title (without regard to deductibles and coinsurance under this title).[2]

(c) No payment may be made under part B for any expenses incurred for—

(1) a drug product—

(A) which is described in section 107(c)(3) of the Drug Amendments of 1962[3],

(B) which may be dispensed only upon prescription,

(C) for which the Secretary has issued a notice of an opportunity for a hearing under subsection (e) of section 505 of the Federal Food, Drug, and Cosmetic Act[4] on a proposed order of the Secretary to withdraw approval of an application for such drug product under such section because the Secretary has determined that the drug is less than effective for all conditions of use prescribed, recommended, or suggested in its labeling, and

(D) for which the Secretary has not determined there is a compelling justification for its medical need; and

(2) any other drug product—

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[1]P.L. 83-591.

[2]P.L. 97-248, §116(b), added paragraph (3), effective with respect to items and services furnished on or after January 1, 1983.

See 38 U.S.C. 5053(d) with respect to care or services furnished by a Veterans' Administration facility to a Title XVIII beneficiary who is not eligible for Veterans' Administration benefits.

See P.L. 94-581, "Veterans Omnibus Health Care Act of 1976", §115(c), with respect to the report to Congress required with respect to that Veterans' Administration care and service.

[3]P.L. 87-781.

[4]P.L. 75-717.

(A) which is identical, related, or similar (as determined in accordance with section 310.6 of title 21 of the Code of Federal Regulations) to a drug product described in paragraph (1), and

(B) for which the Secretary has not determined there is a compelling justification for its medical need,

until such time as the Secretary withdraws such proposed order.[1]

(d)(1) No payment may be made under this title with respect to any item or services furnished to an individual by a person where the Secretary determines under this subsection that such person—

(A) has knowingly and willfully made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title;

(B) has submitted or caused to be submitted (except in the case of a provider of services), bills or requests for payment under this title containing charges (or in applicable cases requests for payment of costs to such person) for services rendered which the Secretary finds to be substantially in excess of such person's customary charges (or in applicable cases substantially in excess of such person's costs) for such services, unless the Secretary finds there is good cause for such bills or requests containing such charges (or in applicable cases, such costs); or

(C) has furnished services or supplies which are determined by the Secretary on the basis of information acquired by the Secretary in the administration of this title[2] to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care.[3]

(2) A determination made by the Secretary under this subsection shall be effective at such time and upon such reasonable notice to the public and to the person furnishing the services involved as may be specified in regulations. Such determination shall be effective with respect to services furnished to an individual on or after the effective date of such determination (except that in the case of inpatient hospital services, posthospital extended care services, and home health services such determination shall be effective in the manner provided in section 1866(b)(3) and (4) with respect to terminations of agreements), and shall remain in effect until the Secretary finds and gives reasonable notice to the public that the basis for such determination has been removed and that there is reasonable assurance that it will not recur.

(3) Any person furnishing services described in paragraph (1) who is dissatisfied with a determination made by the Secretary under this subsection shall be entitled to reasonable notice and opportunity for a hearing thereon by the Secretary to the same extent as is provided

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[1] P.L. 97-35, §2103(a)(1), added subsection (c), effective with respect to expenses incurred on or after October 1, 1981.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §115(b), with respect to use of funds for implementing or enforcing this subsection.

[2] P.L. 97-248, §148(a), struck out ", on the basis of reports transmitted to him in accordance with section 1157 of this Act (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this title)," and substituted "on the basis of information acquired by the Secretary in the administration of this title", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[3] See 18 U.S.C. 1028 and 1738 with respect to penalties relating to use of identification documents.

in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(4) The Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of any determination made under the provisions of this subsection.

(e) No payment may be made under this title with respect to any item or service furnished by a physician or other individual during the period when he is barred pursuant to section 1128 from participation in the program under this title.

(f) The Secretary shall establish utilization guidelines for the determination of whether or not payment may be made, consistent with paragraph (1)(A)[1] of subsection (a), under part A or part B for expenses incurred with respect to the provision of home health services, and shall provide for the implementation of such guidelines through a process of selective postpayment coverage review by intermediaries or otherwise.[2]

(g) The Secretary shall, in making the determinations under paragraphs (1) and (9) of subsection (a), and for the purposes of promoting the effective, efficient, and economical delivery of health care services, and of promoting the quality of services of the type for which payment may be made under this title, enter into contracts with utilization and quality control peer review organizations pursuant to part B of title XI of this Act.[3]

CONSULTATION WITH STATE AGENCIES AND OTHER ORGANIZATIONS TO DEVELOP CONDITIONS OF PARTICIPATION FOR PROVIDERS OF SERVICES

SEC. 1863. [42 U.S.C. 1395z] In carrying out his functions, relating to determination of conditions of participation by providers of services, under subsections (e)(9), (f)(4), (g)(4), (j)(11)[4], (o)(6), (cc)(2)(I)[5], and (dd)(2)[6] of section 1861, or by ambulatory surgical centers under section 1832(a)(2)(F)(i), the Secretary shall consult with the Health Insurance Benefits Advisory Council[7] established by section 1867, appropriate State agencies, and recognized national listing or accrediting bodies, and may consult with appropriate local agencies. Such conditions prescribed under any of such subsections may be varied for different areas or different classes of institutions or agencies and may, at the request of a State, provide higher requirements for such State than for other States; except that, in the case of any State or political subdivision of a State which imposes higher requirements on institutions as a condition to the purchase of services (or of certain specified services) in such institutions under a State plan approved

[1] P.L. 97-248, §122(g)(1), inserted "(A)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2] P.L. 97-35, §2152(a), added subsection (f), effective August 13, 1981.

[3] P.L. 97-248, §142, added subsection (g), effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[4] As in original. Probably should be "(j)(15)". Not conformed to redesignation by P.L. 92-603, §234(d).

[5] P.L. 96-499, §933(f), struck out "and (o)(6)" and substituted "(o)(6), and (cc)(2)(I)", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[6] P.L. 97-248, §122(g)(2), struck out "and (cc)(2)(I)" and substituted "(cc)(2)(I), and (dd)(2)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[7] See P.L. 92-463, "Federal Advisory Committee Act", §§2-15, with respect to provisions governing the operations of advisory committees.

under title I, XVI, or XIX, the Secretary shall impose like requirements as a condition to the payment for services (or for the services specified by the State or subdivision) in such institutions in such State or subdivision.

USE OF STATE AGENCIES TO DETERMINE COMPLIANCE BY PROVIDERS OF SERVICES WITH CONDITIONS OF PARTICIPATION

SEC. 1864. [42 U.S.C. 1395aa] (a) The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether an agency is a hospice program[1] or whether a facility therein is a rural health clinic as defined in section 1861(aa)(2) or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2)[2], or whether a laboratory meets the requirements of paragraphs (11) and (12)[3] of section 1861(s), or whether a clinic, rehabilitation agency or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1861(p)(4), or whether an ambulatory surgical center meets the standards specified under section 1832(a)(2)(F)(i). To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, comprehensive outpatient rehabilitation facility,[4] home health agency, or hospice program[5] (as those terms are defined in section 1861) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1861(j). Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility,[6] laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility,

[1] P.L. 97-248, §122(g)(3)(A), inserted "or whether an agency is a hospice program". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2] P.L. 96-499, §933(g)(1), inserted "or a comprehensive outpatient rehabilitation facility as defined in section 1861(cc)(2)", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[3] P.L. 96-611, §1(a)(2), struck out "(10) and (11)" and substituted "(11) and (12)", effective on, and applicable to services furnished on or after, July 1, 1981.

[4] P.L. 96-499, §933(g)(2), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[5] P.L. 97-248, §122(g)(3)(B), struck out "or home health agency" and substituted "home health agency, or hospice program". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[6] P.L. 96-499, §933(g)(2), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility,[1] laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this title and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, ambulatory surgical center, rural health clinic, comprehensive outpatient rehabilitation facility,[2] laboratory, clinic, agency, or organization.

(b) The Secretary shall pay any such State, in advance or by way of reimbursement, as may be provided in the agreement with it (and may make adjustments in such payments on account of overpayments or underpayments previously made), for the reasonable cost of performing the functions specified in subsection (a), and for the Federal Hospital Insurance Trust Fund's fair share of the costs attributable to the planning and other efforts directed toward coordination of activities in carrying out its agreement and other activities related to the provision of services similar to those for which payment may be made under part A, or related to the facilities and personnel required for the provision of such services, or related to improving the quality of such services.

(c) The Secretary is authorized to enter into an agreement with any State under which the appropriate State or local agency which performs the certification function described in subsection (a) will survey, on a selective sample basis (or where the Secretary finds that a survey is appropriate because of substantial allegations of the existence of a significant deficiency or deficiencies which would, if found to be present, adversely affect health and safety of patients), hospitals which have an agreement with the Secretary under section 1866 and which are accredited by the Joint Commission on the[3] Accreditation of Hospitals. The Secretary shall pay for such services in the manner prescribed in subsection (b).

EFFECT OF ACCREDITATION

SEC. 1865. [42 U.S.C. 1395bb] (a) Except as provided in subsection (b) and the second sentence of section 1863, if—

(1) an institution is accredited as a hospital by the Joint Commission on Accreditation of Hospitals, and

(2) such institution (if it is included within a survey described in section 1864(c)) authorizes the Commission to release to the Secretary (on a confidential basis) upon his request (or such State agency as the Secretary may designate) a copy of the most current accreditation survey of such institution made by such Commission,

then, such institution shall be deemed to meet the requirements of the numbered paragraphs of section 1861(e); except—

(3) paragraph (6) thereof, and

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[1] P.L. 96-499, §933(g)(2), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[2] P.L. 96-499, §933(g)(2), inserted "comprehensive outpatient rehabilitation facility,", effective with respect to a comprehensive outpatient rehabilitation facility's first accounting period which begins on or after July 1, 1981.

[3] As in original; "the" should be stricken.

(4) any standard, promulgated by the Secretary pursuant to paragraph (9) thereof, which is higher than the requirements prescribed for accreditation by such Commission.

If such Commission, as a condition for accreditation of a hospital, requires a utilization review plan (or imposes another requirement which serves substantially the same purpose) or imposes a standard which the Secretary determines is at least equivalent to the standard promulgated by the Secretary as described in paragraph (4) of this subsection, the Secretary is authorized to find that all institutions so accredited by such Commission comply also with section 1861(e)(6) or the standard described in such paragraph (4), as the case may be. In addition, if the Secretary finds that accreditation of an institution or agency by the American Osteopathic Association or any other national accreditation body provides reasonable assurance that any or all of the conditions of section 1861(e), (j), (o), or (dd)[1], as the case may be, are met, he may, to the extent he deems it appropriate, treat such institution or agency as meeting the condition or conditions with respect to which he made such finding.

(b) Notwithstanding any other provision of this title, if the Secretary finds following a survey made pursuant to section 1864(c) that a hospital[2] has significant deficiencies (as defined in regulations pertaining to health and safety), the hospital[3] shall, after the date of notice of such finding to the hospital and for such period as may be prescribed in regulations, be deemed not to meet the requirements of the numbered paragraphs of section 1861(e).

AGREEMENTS WITH PROVIDERS OF SERVICES[4]

SEC. 1866. [42 U.S.C. 1395cc] (a)(1) Any provider of services (except a fund designated for purposes of section 1814(g) and section 1835(e)) shall be qualified to participate under this title and shall be eligible for payments under this title if it files with the Secretary an agreement—

(A) not to charge, except as provided in paragraph (2), any individual or any other person for items or services for which such individual is entitled to have payment made under this title (or for which he would be so entitled if such provider of services had complied with the procedural and other requirements under or pursuant to this title or for which such provider is paid pursuant to the provisions of section 1814(e)),[5]

(B) not to charge any individual or any other person for items or services for which such individual is not entitled to have payment made under this title because payment for expenses incurred for such items or services may not be made by reason of the provisions of paragraph (1) or (9) of section 1862(a)[6], but only

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[1]P.L. 97-248, §122(g)(4), struck out "or (o)" and substituted "(o), or (dd)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

[2]P.L. 97-248, §128(d)(3), struck out "an institution" and substituted "a hospital", effective September 3, 1982.

[3]P.L. 97-248, §128(d)(3), struck out "such institution" and substituted "the hospital", effective September 3, 1982.

[4]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §119, with respect to private sector review initiative and restriction against recovery from beneficiaries.

[5]P.L. 97-248, §144(1), struck out "and", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[6]P.L. 97-248, §128(d)(4), inserted "of section 1862(a)", effective September 3, 1982.

if (i) such individual was without fault in incurring such expenses and (ii) the Secretary's determination that such payment may not be made for such items and services was made after the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title,[1]

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person,[2]

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this title) with respect to the provider,[3]

(E) to release data with respect to patients of such provider upon request to an organization having a contract with the Secretary under part B of title XI as may be necessary (i) to allow such organization to carry out its functions under such contract, or (ii) to allow such organization to carry out similar review functions under any contract the organization may have with a private or public agency paying for health care in the same area with respect to patients who authorize release of such data for such purposes[4]

(F) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (c) or (d) of section 1886, to maintain an agreement with a utilization and quality control peer review organization (with[5] an organization which has a contract with the Secretary under part B of title XI for the area in which the hospital is located) under which the organization will perform functions under that part with respect to the review of the validity of diagnostic information provided by such hospital, the completeness, adequacy, and quality of care provided, the appropriateness of admissions and discharges, and the appropriateness of care provided for which additional payments are sought under section 1886(d)(5), with respect to inpatient hospital services for which payment may be made under part A of this title (and for purposes of payment

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[1]P.L. 97-248, §144(1), struck out "and", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[2]P.L. 97-248, §144(1), struck out "and", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[3]P.L. 98-21, §602(f)(1)(A), struck out "and", applicable with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[4]P.L. 98-21, §602(f)(1)(B), struck out the period at the end of subparagraph (E), applicable with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

A comma should be inserted.

P.L. 97-248, §144(3), added subparagraph (E), effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[5]P.L. 98-21, §602(l)(1), struck out "(if there is such" and substituted "(with", effective October 1, 1984.

under this title, the cost of such agreement to the hospital shall be considered a cost incurred by such hospital in providing inpatient services under part A, and (i) shall be paid directly by the Secretary to such organization on behalf of such hospital in accordance with a rate per review established by the Secretary, (ii) shall be transferred from the Federal Hospital Insurance Trust Fund, without regard to amounts appropriated in advance in appropriation Acts, in the same manner as transfers are made for payment for services provided directly to beneficiaries, (iii) shall be not less than an amount which reflects the rates per review established in fiscal year 1982 for both direct and administrative costs (adjusted for inflation), and (iv) shall not be less in the aggregate for a fiscal year than the aggregate amount expended in fiscal year 1982 for direct and administrative costs (adjusted for inflation)) of such reviews,[1]

(G) in the case of hospitals which provide inpatient hospital services for which payment may be made under subsection (b) or (d) of section 1886, not to charge any individual or any other person for inpatient hospital services for which such individual would be entitled to have payment made under part A but for a denial or reduction of payments under section 1886(f)(2), and[2]

(H) in the case of hospitals which provide inpatient hospital services for which payment may be made under this title, to have all items and services (other than physicians' services as defined in regulations for purposes of section 1862(a)(14)) (i) that are furnished to an individual who is an inpatient of the hospital, and (ii) for which the individual is entitled to have payment made under this title, furnished by the hospital or otherwise under arrangement (as defined in section 1861(w)(1)) made by the hospital.[3]

[4] In the case of a hospital which has an agreement in effect with an organization described in subparagraph (F), which organization's contract with the Secretary under part B of title XI is terminated on or after October 1, 1984, the hospital shall not be determined to be out of compliance with the requirement of such subparagraph during the six month period beginning on the date of the termination of that contract.[5]

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1813(a)(1),[6] (a)(3), or (a)(4)[7], section

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[1]P.L. 98-21, §602(f)(1)(C), added subparagraph (F), effective October 1, 1983.
[2]P.L. 98-21, §602(f)(1)(C), added subparagraph (G), effective October 1, 1983.
[3]P.L. 98-21, §602(f)(1)(C), added subparagraph (H), effective October 1, 1983.
See P.L. 98-21, "Social Security Amendments of 1983", §602(k), with respect to certain conditions under which the Secretary may waive the requirements of this provision.
[4]P.L. 97-35, §2153, struck out the second sentence of paragraph (1) of subsection (a), which read as follows: "An agreement under this paragraph with a skilled nursing facility shall be for a term of not exceeding 12 months, except that the Secretary may extend such term for a period not exceeding 2 months, where the health and safety of patients will not be jeopardized thereby, if he finds that such extension is necessary to prevent irreparable harm to such facility or hardship to the individuals being furnished items or services by such facility or if he finds it impracticable within such 12-month period to determine whether such facility is complying with the provisions of this title and regulations thereunder.", effective August 13, 1981.
[5]P.L. 98-21, §602(l)(2), added the preceding sentence to paragraph (1), effective October 1, 1984.
[6]P.L. 97-448, §309(b)(11), inserted ",", effective as if it had been included originally in P.L. 97-248. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.
[7]P.L. 97-248, §122(g)(5), struck out "or (a)(3)" from §1866(b)(2)(A) and substituted "(a)(3), or (a)(4)". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

1833(b), or section 1861(y)(3) with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1833(c), clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section. A provider of services may not impose a charge under clause (ii) of the first sentence of this subparagraph with respect to items and services described in section 1861(s)(10) for which payment is made under part B.[1]

(B)(i) Where a provider of services has furnished, at the request of such individual, items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider of services may also charge such individual or other person for such more expensive items or services to the extent that the amount customarily charged by it for the items or services furnished at such request exceeds the amount customarily charged by it for the items or services with respect to which payment may be made under this title.

(ii) Where a provider of services customarily furnishes an individual items or services which are more expensive than the items or services determined to be necessary in the efficient delivery of needed health services under this title and which have not been requested by such individual, such provider may (except with respect to emergency services and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1886(d)[2]) also charge such individual or other person for such more expensive items or services to the extent that the costs of (or, if less, the customary charges for) such more expensive items or services experienced by such provider in the second fiscal period immediately preceding the fiscal period in which such charges are imposed exceed the cost of such items or services determined to be necessary in the efficient delivery of needed health services, but only if—

(I) the Secretary has provided notice to the public of any charges being imposed on individuals entitled to benefits under this title on account of costs in excess of the costs determined to be necessary in the efficient delivery of needed health services under this title by particular providers of services in the area in which such items or services are furnished, and

(II) the provider of services has identified such charges to such individual or other person, in such manner as the Secretary may prescribe, as charges to meet costs in excess of the cost deter-

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P.L. 97-448, §309(a)(5), amended P.L. 97-248, §122(g)(5), by striking out "1866(b)(2)(A)" and substituting "1866(a)(2)(A)", effective as if it had been included originally in P.L. 97-248.

[1]P.L. 96-611, §1(b)(4), added the preceding sentence, effective on, and applicable to services furnished on or after, July 1, 1981.

[2]P.L. 98-21, §602(f)(2), inserted "and except with respect to inpatient hospital costs with respect to which amounts are payable under section 1886(d)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

mined to be necessary in the efficient delivery of needed health services under this title.

(C) A provider of services may in accordance with its customary practice also appropriately charge any such individual for any whole blood (or equivalent quantities of packed red blood cells, as defined under regulations) furnished him with respect to which a deductible is imposed under section 1813(a)(2), except that (i) any excess of such charge over the cost to such provider for the blood (or equivalent quantities of packed red blood cells, as so defined) shall be deducted from any payment to such provider under this title, (ii) no such charge may be imposed for the cost of administration of such blood (or equivalent quantities of packed red blood cells, as so defined), and (iii) such charge may not be made to the extent such blood (or equivalent quantities of packed red blood cells, as so defined) has been replaced on behalf of such individual or arrangements have been made for its replacement on his behalf. For purposes of subparagraph (C), whole blood (or equivalent quantities of packed red blood cells, as so defined) furnished an individual shall be deemed replaced when the provider of services is given one pint of blood for each pint of blood (or equivalent quantities of packed red blood cells, as so defined) furnished such individual with respect to which a deduction is imposed under section 1813(a)(2).

(D) Where a provider of services customarily furnishes items or services which are in excess of or more expensive than the items or services with respect to which payment may be made under this title, such provider, notwithstanding the preceding provisions of this paragraph, may not, under the authority of section 1866(a)(2)(B)(ii), charge any individual or other person any amount for such items or services in excess of the amount of the payment which may otherwise be made for such items or services under this title if the admitting physician has a direct or indirect financial interest in such provider.

(3) The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such provider, is a person described in section 1126(a).

(b) An agreement with the Secretary under this section may be terminated[1] —

(1) by the provider of services at such time and upon such notice to the Secretary and the public as may be provided in regulations, except that notice of more than 6 months shall not be required, or

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this title and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1861, or (C) that such provider of

[1] P.L. 97-248, §128(a)(5), struck out "(and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1))". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §128(e)(2), p. 791.

services has failed (i) to provide such information as the Secretary finds necessary to determine whether payments are or were due under this title and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information, or (ii) to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to such provider by the Secretary (I) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such provider has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (II) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such provider and any wholly owned supplier or between such provider and any subcontractor, or (D) that such provider has made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this title or for use in determining the right to a payment under this title, or (E) that such provider has submitted, or caused to be submitted, requests for payment under this title of amounts for rendering services substantially in excess of the costs incurred by such provider for rendering such services, or (F) that such provider has furnished services or supplies which are determined by the Secretary to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care, or (G) that such provider (at the time the agreement was entered into) did not fully and accurately make any disclosure required of it by section 1126(a).

Any termination shall be applicable—

(3) in the case of inpatient hospital services (including tuberculosis hospital services and inpatient psychiatric hospital services) or post-hospital extended care services, with respect to services furnished after the effective date of such termination, except that payment may be made for up to thirty days with respect to inpatient institutional services furnished to any eligible individual who was admitted to such institution prior to the effective date of such termination,

(4)(A) with respect to home health services or hospice care[1] furnished to an individual under a plan therefor established on or after the effective date of such termination, or (B) if a plan is established before such effective date, with respect to such services furnished to such individual after the calendar year in which such termination is effective, and

(5) with respect to any other items and services furnished on or after the effective date of such termination.

(c)(1) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, such provider may not file another agreement under this title unless the Secretary finds

[1] P.L. 97-248, §122(g)(6), inserted "or hospice care". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §122(h)(1), p. 791.

that the reason for the termination has been removed and that there is reasonable assurance that it will not recur.

(2) In the case of a skilled nursing facility participating in the programs established by this title and title XIX, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1910(a), and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.

(3) Where an agreement filed under this title by a provider of services has been terminated by the Secretary, the Secretary shall promptly notify each State agency which administers or supervises the administration of a State plan approved under title XIX of such termination.

(d) If the Secretary finds that there is a substantial failure to make timely review in accordance with section 1861(k) of long-stay cases in a hospital or skilled nursing facility, he may, in lieu of terminating his agreement with such hospital or facility, decide that, with respect to any individual admitted to such hospital or facility after a subsequent date specified by him, no payment shall be made under this title for inpatient hospital services (including inpatient tuberculosis hospital services and inpatient psychiatric hospital services) after the 20th day of a continuous period of such services or for post-hospital extended care services after such day of a continuous period of such care as is prescribed in or pursuant to regulations, as the case may be. Such decision may be made effective only after such notice to the hospital, or (in the case of a skilled nursing facility) to the facility and the hospital or hospitals with which it has a transfer agreement, and to the public, as may be prescribed by regulations, and its effectiveness shall terminate when the Secretary finds that the reason therefor has been removed and that there is reasonable assurance that it will not recur. The Secretary shall not make any such decision except after reasonable notice and opportunity for hearing to the institution or agency affected thereby.

(e) For purposes of this section, the term "provider of services" shall include a clinic, rehabilitation agency, or public health agency if, in the case of a clinic or rehabilitation agency, such clinic or agency meets the requirements of section 1861(p)(4)(A), or if, in the case of a public health agency, such agency meets the requirements of section 1861(p)(4)(B), but only with respect to the furnishing of outpatient physical therapy services (as therein defined).

(f)(1) Where the Secretary determines that a skilled nursing facility which has filed an agreement pursuant to subsection (a)(1) or which has been certified for participation in a plan approved under title XIX no longer substantially meets the provisions of section 1861(j), and further determines that the facility's deficiencies—

(A) immediately jeopardize the health and safety of its patients, the Secretary shall provide for the termination of the agreement or of the certification of the facility and shall provide, or

(B) do not immediately jeopardize the health and safety of its patients, the Secretary may, in lieu of terminating the agreement or certification of the facility, provide

that no payment shall be made under this title (and order a State agency established or designated pursuant to section 1902(a)(5) of this

Act to administer or supervise the administration of the State plan under title XIX of this Act to deny payment under such title XIX) with respect to any individual admitted to such facility after a date specified by him.

(2) The Secretary shall not make such a decision with respect to a facility until such facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The Secretary's decision to deny payment may be made effective only after such notice to the public and to the facility as may be prescribed in regulations, and its effectiveness shall terminate (A) when the Secretary finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause (B) of the previous sentence applies still fails to substantially meet the provisions of section 1861(j) on the date specified in such clause, the Secretary shall terminate such facility's agreement or provide for termination of such facility's certification, notwithstanding the provisions of paragraph (2) of subsection (b), effective with the first day of the first month following the month specified in such clause.

HEALTH INSURANCE BENEFITS ADVISORY COUNCIL[1]

SEC. 1867. [42 U.S.C. 1395dd] (a) There is hereby created a Health Insurance Benefits Advisory Council which shall consist of 19 persons, not otherwise in the employ of the United States, appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. The Secretary shall from time to time appoint one of the members to serve as Chairman. The members shall include persons who are outstanding in fields related to hospital, medical, and other health activities, persons who are representative of organizations and associations of professional personnel in the field of medicine, and at least one person who is representative of the general public. Each member shall hold office for a term of four years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term. A member shall not be eligible to serve continuously for more than two terms. Members of the Advisory Council, while attending meetings or conferences thereof or otherwise serving on business of the Advisory Council, shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding $100 per day, including traveltime, and while so serving away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government service employed intermittently. The Advisory

[1] See P.L. 92-463, "Federal Advisory Committee Act", §§2-15, with respect to provisions governing the operations of advisory committees.

Council shall meet as the Secretary deems necessary, but not less than annually.

(b) It shall be the function of the Advisory Council to provide advice and recommendations for the consideration of the Secretary on matters of general policy with respect to this title and title XIX.

[SEC. 1868. Repealed.[1]]

DETERMINATIONS; APPEALS

SEC. 1869. [42 U.S.C. 1395ff] (a) The determination of whether an individual is entitled to benefits under part A or part B, and the determination of the amount of benefits under part A, shall be made by the Secretary in accordance with regulations prescribed by him.

(b)(1) Any individual dissatisfied with any determination under subsection (a) as to—

(A) whether he meets the conditions of section 226 of this Act or section 103 of the Social Security Amendments of 1965[2], or

(B) whether he is eligible to enroll and has enrolled pursuant to the provisions of part B of this title, or section 1818, or section 1819[3], or

(C) the amount of benefits under part A (including a determination where such amount is determined to be zero)

shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

(2) Notwithstanding the provisions of subparagraph (C) of paragraph (1) of this subsection, a hearing shall not be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $100; nor shall judicial review be available to an individual by reason of such subparagraph (C) if the amount in controversy is less than $1,000.

(c) Any institution or agency dissatisfied with any determination by the Secretary that it is not a provider of services, or with any determination described in section 1866(b)(2), shall be entitled to a hearing thereon by the Secretary (after reasonable notice and opportunity for hearing) to the same extent as is provided in section 205(b), and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g).

OVERPAYMENTS ON BEHALF OF INDIVIDUALS AND SETTLEMENT OF CLAIMS FOR BENEFITS ON BEHALF OF DECEASED INDIVIDUALS[4]

SEC. 1870. [42 U.S.C. 1395gg] (a) Any payment under this title to any provider of services or other person with respect to any items or services furnished any individual shall be regarded as a payment to such individual.

(b) Where—

(1) more than the correct amount is paid under this title to a provider of services or other person for items or services furnished an individual and the Secretary determines (A) that,

[1] P.L. 90-248, §164(c); 81 Stat. 874.
[2] P.L. 89-97.
[3] As in original. No §1819 has been enacted.
[4] As in original [P.L. 90-248, §154(b); 81 Stat. 862].

within such period as he may specify, the excess over the correct amount cannot be recouped from such provider of services or other person, or (B) that such provider of services or other person was without fault with respect to the payment of such excess over the correct amount, or

(2) any payment has been made under section 1814(e) to a provider of services or other person for items or services furnished an individual,

proper adjustments shall be made, under regulations prescribed (after consultation with the Railroad Retirement Board) by the Secretary, by decreasing subsequent payments—

(3) to which such individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974[1], as the case may be, or

(4) if such individual dies before such adjustment has been completed, to which any other individual is entitled under title II of this Act or under the Railroad Retirement Act of 1974[2], as the case may be, with respect to the wages and self-employment income or the compensation constituting the basis of the benefits of such deceased individual under title II of such Act.

As soon as practicable after any adjustment under paragraph (3) or (4) is determined to be necessary, the Secretary, for purposes of this section, section 1817(g), and section 1841(f), shall certify (to the Railroad Retirement Board if the adjustment is to be made by decreasing subsequent payments under the Railroad Retirement Act of 1974[3]) the amount of the overpayment as to which the adjustment is to be made. For purposes of clause (B) of paragraph (1), such provider of services or such other person shall, in the absence of evidence to the contrary, be deemed to be without fault if the Secretary's determination that more than such correct amount was paid was made subsequent to the third year following the year in which notice was sent to such individual that such amount had been paid; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.

(c) There shall be no adjustment as provided in subsection (b) (nor shall there be recovery) in any case where the incorrect payment has been made (including payments under section 1814(e)) with respect to an individual who is without fault or where the adjustment (or recovery) would be made by decreasing payments to which another person who is without fault is entitled as provided in subsection (b)(4), if such adjustment (or recovery) would defeat the purposes of title II or title XVIII or would be against equity and good conscience. Adjustment or recovery of an incorrect payment (or only such part of an incorrect payment as the Secretary determines to be inconsistent with the purposes of this title) against an individual who is without fault shall be deemed to be against equity and good conscience if (A) the incorrect payment was made for expenses incurred for items or services for which payment may not be made under this title by reason of the provisions of paragraph (1) or (9) of section 1862(a)[4] and

[1]P.L. 75-162 [as amended by P.L. 93-445].
[2]P.L. 75-162 [as amended by P.L. 93-445].
[3]P.L. 75-162 [as amended by P.L. 93-445].
[4]P.L. 97-248, §128(d)(1), inserted "(a)", effective September 3, 1982.

(B) if the Secretary's determination that such payment was incorrect was made subsequent to the third year following the year in which notice of such payment was sent to such individual; except that the Secretary may reduce such three-year period to not less than one year if he finds such reduction is consistent with the objectives of this title.

(d) No certifying or disbursing officer shall be held liable for any amount certified or paid by him to any provider of services or other person where the adjustment or recovery of such amount is waived under subsection (c) or where adjustment under subsection (b) is not completed prior to the death of all persons against whose benefits such adjustment is authorized.

(e) If an individual, who received services for which payment may be made to such individual under this title, dies, and payment for such services was made (other than under this title), and the individual died before any payment due him under this title with respect to such services was completed, payment of the amount due (including the amount of any unnegotiated checks) shall be made—

(1) if the payment for such services was made (before or after such individual's death) by a person other than the deceased individual, to the person or persons determined by the Secretary under regulations to have paid for such services, or if the payment for such services was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any;

(2) if there is no person who meets the requirements of paragraph (1), to the person, if any, who is determined by the Secretary to be the surviving spouse of the deceased individual and who was either living in the same household with the deceased at the time of his death or was, for the month in which the deceased individual died, entitled to a monthly benefit on the basis of the same wages and self-employment income as was the deceased individual;

(3) if there is no person who meets the requirements of paragraph (1) or (2), or if the person who meets such requirements dies before the payment due him under this title is completed, to the child or children, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(4) if there is no person who meets the requirements of paragraph (1), (2), or (3), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual who were, for the month in which the deceased individual died, entitled to monthly benefits on the basis of the same wages and self-employment income as was the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent);

(5) if there is no person who meets the requirements of paragraph (1), (2), (3), or (4), or if each person who meets such requirements dies before the payment due him under this title is

completed, to the person, if any, determined by the Secretary to be the surviving spouse of the deceased individual;

(6) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), or (5), or if each person who meets such requirements dies before the payment due him under this title is completed, to the person or persons, if any, determined by the Secretary to be the child or children of the deceased individual (and, in case there is more than one such child, in equal parts to each such child);

(7) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), or (6), or if each person who meets such requirements dies before the payment due him under this title is completed, to the parent or parents, if any, of the deceased individual (and, in case there is more than one such parent, in equal parts to each such parent); or

(8) if there is no person who meets the requirements of paragraph (1), (2), (3), (4), (5), (6), or (7), or if each person who meets such requirements dies before the payment due him under this title is completed, to the legal representatives of the estate of the deceased individual, if any.

(f) If an individual who received medical and other health services for which payment may be made under section 1832(a)(1) dies, and no assignment of the right to payment for such services was made by such individual before his death, and payment for such services has not been made—

(1) if the person or persons who furnished the services agree that the reasonable charge is the full charge for the services, payment for such services shall be made to such person or persons, and

(2) if the person or persons who furnished the services do not agree that the reasonable charge is the full charge for the services, payment for such services shall be made on the basis of an itemized bill to the person who has agreed to assume the legal obligation to make payment for such services and files a request for payment (with such accompanying evidence of such legal obligation as may be required in regulations),

but only in such amount and subject to such conditions as would be applicable if the individual who received the services had not died.

(g) If an individual, who is enrolled under section 1818(c) of the Social Security Act or under section 1837, dies, and premiums with respect to such enrollment have been received with respect to such individual for any month after the month of his death, such premiums shall be refunded to the person or persons determined by the Secretary under regulations to have paid such premiums or if payment for such premiums was made by the deceased individual before his death, to the legal representative of the estate of such deceased individual, if any. If there is no person who meets the requirements of the preceding sentence such premiums shall be refunded to the person or persons in the priorities specified in paragraphs (2) through (7) of subsection (e).

REGULATIONS[1]

SEC. 1871. [42 U.S.C. 1395hh] The Secretary shall prescribe such regulations as may be necessary to carry out the administration of

[1]See P.L. 94-437, "Indian Health Care Improvement Act", §702(b), with respect to regulations applicable to Indians.
See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982"; §101(b)(2)(A), with respect to

the insurance programs under this title. When used in this title, the term "regulations" means, unless the context otherwise requires, regulations prescribed by the Secretary.

APPLICATION OF CERTAIN PROVISIONS OF TITLE II

SEC. 1872. [42 U.S.C. 1395ii] The provisions of sections 206,[1] and 216(j), and of subsections (a), (d), (e), (f)[2], (h), (i), (j), (k), and (l) of section 205, shall also apply with respect to this title to the same extent as they are applicable with respect to title II.

DESIGNATION OF ORGANIZATION OR PUBLICATION BY NAME

SEC. 1873. [42 U.S.C. 1395jj] Designation in this title, by name, of any nongovernmental organization or publication shall not be affected by change of name of such organization or publication, and shall apply to any successor organization or publication which the Secretary finds serves the purpose for which such designation is made.

ADMINISTRATION

SEC. 1874. [42 U.S.C. 1395kk] (a) Except as otherwise provided in this title and in the Railroad Retirement Act of 1974[3], the insurance programs established by this title shall be administered by the Secretary. The Secretary may perform any of his functions under this title directly, or by contract providing for payment in advance or by way of reimbursement, and in such installments, as the Secretary may deem necessary.

(b) The Secretary may contract with any person, agency, or institution to secure on a reimbursable basis such special data, actuarial information, and other information as may be necessary in the carrying out of his functions under this title.

(c) In the course of any hearing, investigation, or other proceeding that he is authorized to conduct under this title, the Secretary may administer oaths and affirmations.

STUDIES AND RECOMMENDATIONS[4]

SEC. 1875. [42 U.S.C. 1395ll] (a) The Secretary shall carry on studies and develop recommendations to be submitted from time to time to the Congress relating to health care of the aged and the disabled, including studies and recommendations concerning (1) the adequacy of existing personnel and facilities for health care for purposes of the programs under parts A and B; (2) methods for

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regulations on payment to hospitals for inpatient hospital services; §111, with respect to regulations concerning elimination of private room subsidy; and §113(b)(2), with respect to regulations implementing Social Security Act §1842(b)(6)(D).

[1] As in original. Comma should be stricken.

[2] P.L. 91-452, "Organized Crime Control Act of 1970", §236, repealed Social Security Act §205(f), effective December 14, 1970.

[3] P.L. 75-162 [as amended by P.L. 93-445].

[4] See P.L. 78-410, "Public Health Service Act", §328(d)(2), with respect to Comptroller General's obligation to report to Congress on hospital-affiliated primary care centers.

See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §937(b), with respect to Secretary's report to Congress on optometrists' services; §958, with respect to various studies and demonstration projects and reports to Congress; and §966, with respect to demonstration projects relating to training of AFDC recipients as home health aides.

encouraging the further development of efficient and economical forms of health care which are a constructive alternative to inpatient hospital care; and (3) the effects of the deductibles and coinsurance provisions upon beneficiaries, persons who provide health services, and the financing of the program.

(b) The Secretary shall make a continuing study of the operation and administration of the insurance programs under parts A and B (including a validation of the accreditation process of the Joint Commission on the[1] Accreditation of Hospitals, the operation and administration of health maintenance organizations authorized by section 226 of the Social Security Amendments of 1972[2], the experiments and demonstration projects authorized by section 402 of the Social Security Amendments of 1967[3] and the experiments and demonstration projects authorized by section 222(a) of the Social Security Amendments of 1972[4]), and shall transmit to the Congress annually a report concerning the operation of such programs.

PAYMENTS TO HEALTH MAINTENANCE ORGANIZATIONS AND COMPETITIVE MEDICAL PLANS[5]

SEC. 1876. [42 U.S.C. 1395mm] (a)(1)(A) The Secretary shall annually determine—

(i) a per capita rate of payment for each class of individuals who are enrolled under this section with an eligible organization which has entered into a risk-sharing contract and who are entitled to benefits under part A and enrolled under part B, and

(ii) a per capita rate of payment for each class of individuals who are so enrolled with such an organization and who are enrolled under part B only.

For purposes of this section, the term "risk-sharing contract" means a contract entered into under subsection (g) and the term "reasonable cost reimbursement contract" means a contract entered into under subsection (h).

(B) The Secretary shall define appropriate classes of members, based on age, disability status, and such other factors as the Secretary determines to be appropriate, so as to ensure actuarial equivalence. The Secretary may add to, modify, or substitute for such classes, if such changes will improve the determination of actuarial equivalence.

(C) The annual per capita rate of payment for each such class shall be equal to 95 percent of the adjusted average per capita cost (as defined in paragraph (4)) for that class.

(D) In the case of an eligible organization with a risk-sharing contract, the Secretary shall make monthly payments in advance and in accordance with the rate determined under subparagraph (C) and except as provided in subsection (g)(2), to the organization for each individual enrolled with the organization under this section.

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[1] As in original; "the" should be stricken.
[2] P.L. 92-603.
[3] P.L. 90-248.
[4] P.L. 92-603.
[5] P.L. 97-248, §114(a), amended §1876 in its entirety. For the effective date and definitions of terms, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §114(c), p. 788.
[Section 1876 is not yet effective. As of March 15, 1984, the reports to Congress required by P.L. 97-248, §114(c)(4)(B), to establish the "initial effective date" have not yet been sent.]
See P.L. 97-248, §114(e), with respect to a study of certain terminations of memberships in organizations and a report to Congress.

(E) The amount of payment under this paragraph may be retroactively adjusted to take into account any difference between the actual number of individuals enrolled in the plan under this section and the number of such individuals estimated to be so enrolled in determining the amount of the advance payment.

(2) With respect to any eligible organization which has entered into a reasonable cost reimbursement contract, payments shall be made to such plan in accordance with subsection (h)(2) rather than paragraph (1).

(3) Payments under a contract to an eligible organization under paragraph (1) or (2) shall be instead of the amounts which (in the absence of the contract) would be otherwise payable, pursuant to sections 1814(b) and 1833(a), for services furnished by or through the organization to individuals enrolled with the organization under this section.

(4) For purposes of this section, the term "adjusted average per capita cost" means the average per capita amount that the Secretary estimates in advance (on the basis of actual experience, or retrospective actuarial equivalent based upon an adequate sample and other information and data, in a geographic area served by an eligible organization or in a similar area, with appropriate adjustments to assure actuarial equivalence) would be payable in any contract year for services covered under parts A and B, or part B only, and types of expenses otherwise reimbursable under parts A and B, or part B only (including administrative costs incurred by organizations described in sections 1816 and 1842), if the services were to be furnished by other than an eligible organization or, in the case of services covered only under section 1861(s)(2)(H), if the services were to be furnished by a physician or as an incident to a physician's service.

(5) The payment to an eligible organization under this section for individuals enrolled under this section with the organization and entitled to benefits under part A and enrolled under part B shall be made from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund. The portion of that payment to the organization for a month to be paid by the latter trust fund shall be equal to 200 percent of the sum of—

(A) the product of (i) the number of such individuals for the month who have attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1839(a)(1)[1], and

(B) the product of (i) the number of such individuals for the month who have not attained age 65, and (ii) the monthly actuarial rate for supplementary medical insurance for the month as determined under section 1839(a)(4)[2].

The remainder of that payment shall be paid by the former trust fund.

(6) If an individual is enrolled under this section with an eligible organization having a risk-sharing contract, only the eligible organization shall be entitled to receive payments from the Secretary under this title for services furnished to the individual.

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[1]P.L. 98-21, §606(a)(3)(H)(i), struck out "(c)(1)" and substituted "(a)(1)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

[2]P.L. 98-21, §606(a)(3)(H)(ii), struck out "(c)(4)" and substituted "(a)(4)". For the effective date, see P.L. 98-21, "Social Security Amendments of 1983", §606(c), p. 796.

(b) For purposes of this section, the term "eligible organization" means a public or private entity (which may be a health maintenance organization or a competitive medical plan), organized under the laws of any State, which—

(1) is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act[1]), or

(2) meets the following requirements:

(A) The entity provides to enrolled members at least the following health care services:

(i) Physicians' services performed by physicians (as defined in section 1861(r)(1)).

(ii) Inpatient hospital services.

(iii) Laboratory, X-ray, emergency, and preventive services.

(iv) Out-of-area coverage.

(B) The entity is compensated (except for deductibles, coinsurance, and copayments) for the provision of health care services to enrolled members by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health care service actually provided to a member.

(C) The entity provides physicians' services primarily (i) directly through physicians who are either employees or partners of such organization, or (ii) through contracts with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(D) The entity assumes full financial risk on a prospective basis for the provision of the health care services listed in paragraph (1), except that such entity may—

(i) obtain insurance or make other arrangements for the cost of providing to any enrolled member health care services listed in subparagraph (A) the aggregate value of which exceeds $5,000 in any year,

(ii) obtain insurance or make other arrangements for the cost of health care service listed in subparagraph (A) provided to its enrolled members other than through the entity because medical necessity required their provision before they could be secured through the entity,

(iii) obtain insurance or make other arrangements for not more than 90 percent of the amount by which its costs for any of its fiscal years exceed 115 percent of its income for such fiscal year, and

(iv) make arrangements with physicians or other health professionals, health care institutions, or any combination of such individuals or institutions to assume all or part of the financial risk on a prospective basis for the provision of basic health services by the physicians or other health professionals or through the institutions.

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[1] P.L. 78-410.

(E) The entity has made adequate provision against the risk of insolvency, which provision is satisfactory to the Secretary.

Paragraph (2)(A)(ii) shall not apply to an entity which had contracted with a single State agency administering a State plan approved under title XIX for the provision of services (other than inpatient hospital services) to individuals eligible for such services under such State plan on a prepaid risk basis prior to 1970.

(c)(1) The Secretary may not enter into a contract under this section with an eligible organization unless it meets the requirements of this subsection and subsection (e) with respect to members enrolled under this section.

(2) The organization must provide to members enrolled under this section, through providers and other persons that meet the applicable requirements of this title and part A of title XI—

(A) only those services covered under parts A and B of this title, for those members entitled to benefits under part A and enrolled under part B, or

(B) only those services covered under part B, for those members enrolled only under such part,

which are available to individuals residing in the geographic area served by the organization, except that (i) the organization may provide such members with such additional health care services as the members may elect, at their option, to have covered, and (ii) in the case of an organization with a risk-sharing contract, the organization may provide such members with such additional health care services as the Secretary may approve. The Secretary shall approve any such additional health care services which the organization proposes to offer to such members, unless the Secretary determines that including such additional services will substantially discourage enrollment by covered individuals with the organization.

(3)(A) Each eligible organization must have an open enrollment period, for the enrollment of individuals under this section, of at least 30 days duration every year, and must provide that at any time during which enrollments are accepted, the organization will accept up to the limits of its capacity (as determined by the Secretary) and without restrictions, except as may be authorized in regulations, individuals who are eligible to enroll under subsection (d) in the order in which they apply for enrollment, unless to do so would result in failure to meet the requirements of subsection (f) or would result in the enrollment of enrollees substantially nonrepresentative, as determined in accordance with regulations of the Secretary, of the population in the geographic area served by the organization.

(B) An individual may enroll under this section with an eligible organization in such manner as may be prescribed in regulations and may terminate his enrollment with the eligible organization as of the beginning of the first calendar month following a full calendar month after the request is made for such termination (or, in the case of financial insolvency of the organization, as may be prescribed by regulations) or, in the case of such an organization with a reasonable cost reimbursement contract, as may be prescribed by regulations.

(C) The Secretary may prescribe the procedures and conditions under which an eligible organization that has entered into a contract with the Secretary under this subsection may inform individuals

eligible to enroll under this section with the organization about the organization, or may enroll such individuals with the organization.

(D) The organization must provide assurances to the Secretary that it will not expel or refuse to re-enroll any such individual because of the individual's health status or requirements for health care services, and that it will notify each such individual of such fact at the time of the individual's enrollment.

(4) The organization must—

(A) make the services described in paragraph (2) (and such other health care services as such individuals have contracted for) (i) available and accessible to each such individual, within the area served by the organization,[1] promptly as appropriate and in a manner which assures continuity, and (ii) when medically necessary, available and accessible twenty-four hours a day and seven days a week, and

(B) provide for reimbursement with respect to services which are described in subparagraph (A) and which are provided to such an individual other than through the organization, if (i) the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition and (ii) it was not reasonable given the circumstances to obtain the services through the organization.

(5)(A) The organization must provide meaningful procedures for hearing and resolving grievances between the organization (including any entity or indiviudal through which the organization provides health care services) and members enrolled with the organization under this section.

(B) A member enrolled with an eligible organization under this section who is dissatisfied by reason of his failure to receive any health service to which he believes he is entitled and at no greater charge than he believes he is required to pay is entitled, if the amount in controversy is $100 or more, to a hearing before the Secretary to the same extent as is provided in section 205(b), and in any such hearing the Secretary shall make the eligible organization a party. If the amount in controversy is $1,000 or more, the individual or eligible organization shall, upon notifying the other party, be entitled to judicial review of the Secretary's final decision as provided in section 205(g), and both the individual and the eligible organization shall be entitled to be parties to that judicial review.

(6) The organization must have arrangements, established in accordance with regulations of the Secretary, for an ongoing quality assurance program for health care services it provides to such individuals, which program (A) stresses health outcomes and (B) provides review by physicians and other health care professionals of the process followed in the provision of such health care services.

(d) Subject to the provisions of subsection (c)(3), every individual entitled to benefits under part A and enrolled under part B or enrolled under part B only (other than an individual medically determined to have end-stage renal disease) shall be eligible to enroll under this section with any eligible organization with which the Secretary has entered into a contract under this section and which serves the geographic area in which the individual resides.

(e)(1) In no case may—

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[1] As in original. Probably should read "as promptly as appropriate".

(A) the portion of an eligible organization's premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under parts A and B) to individuals who are enrolled under this section with the organization and who are entitled to benefits under part A and enrolled under part B, or

(B) the portion of its premium rate and the actuarial value of its deductibles, coinsurance, and copayments charged (with respect to services covered under part B) to individuals who are enrolled under this section with the organization and enrolled under part B only

exceed the actuarial value of the coinsurance and deductibles that would be applicable on the average to individuals enrolled under this section with the organization (or, if the Secretary finds that adequate data are not available to determine that actuarial value, the actuarial value of the coinsurance and deductibles applicable on the average to individuals in the area, in the State, or in the United States, eligible to enroll under this section with the organization, or other appropriate data) and entitled to benefits under part A and enrolled under part B, or enrolled under part B only, respectively, if they were not members of an eligible organization.

(2) If the eligible organization provides to its members enrolled under this section services in addition to services covered under parts A and B of this title, election of coverage for such additional services (unless such services have been approved by the Secretary under subsection (c)(2)) shall be optional for such members and such organization shall furnish such members with information on the portion of its premium rate or other charges applicable to such additional services. In no case may the sum of—

(A) the portion of such organization's premium rate charged, with respect to such additional services, to members enrolled under this section, and

(B) the actuarial value of its deductibles, coinsurance, and copayments charged, with respect to such services to such members

exceed the adjusted community rate for such services.

(3) For purposes of this section, the term "adjusted community rate" for a service or services means, at the election of an eligible organization, either—

(A) the rate of payment for that service or services which the Secretary annually determines would apply to a member enrolled under this section with an eligible organization if the rate of payment were determined under a "community rating system" (as defined in section 1302(8) of the Public Health Service Act[1], other than subparagraph (C)), or

(B) such portion of the weighted aggregate premium, which the Secretary annually estimates would apply to a member enrolled under this section with the eligible organization, as the Secretary annually estimates is attributable to that service or services,

but adjusted for differences between the utilization characteristics of the members enrolled with the eligible organization under this

[1]P.L. 78-410.

section and the utilization characteristics of the other members of the organization (or, if the Secretary finds that adequate data are not available to adjust for those differences, the differences between the utilization characteristics of members in other eligible organizations, or individuals in the area, in the State, or in the United States, eligible to enroll under this section with an eligible organization and the utilization characteristics of the rest of the population in the area, in the State, or in the United States, respectively).

(4) Notwithstanding any other provision of law, the eligible organization may (in the case of the provision of services to a member enrolled under this section for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or plan of the United States or a State, under an automobile or liability insurance policy or plan, including a self-insured plan, or under no fault insurance) charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law or policy—

(A) the insurance carrier, employer, or other entity which under such law, plan, or policy is to pay for the provision of such services, or

(B) such member to the extent that the member has been paid under such law, plan, or policy for such services.

(f)(1) Each eligible organization with which the Secretary enters into a contract under this section shall have, for the duration of such contract, an enrolled membership at least one-half of which consists of individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.

(2) The Secretary may modify or waive the requirement imposed by paragraph (1) only if the Secretary determines that—

(A) special circumstances warrant such modification or waiver, and

(B) the eligible organization has taken and is making reasonable efforts to enroll individuals who are not entitled to benefits under this title or under a State plan approved under title XIX.

(g)(1) The Secretary may enter a risk-sharing contract with any eligible organization, as defined in subsection (b)[1], which has at least 5,000 members, except that the Secretary may enter into such a contract with an eligible organization that has fewer members if the organization primarily serves members residing outside of urbanized areas.

(2) Each risk-sharing contract shall provide that—

(A) if the adjusted community rate, as defined in subsection (e)(3), for services under parts A and B (as reduced for the actuarial value of the coinsurance and deductibles under those parts) for members enrolled under this section with the organization and entitled to benefits under part A and enrolled in part B, or

(B) if the adjusted community rate for services under part B (as reduced for the actuarial value of the coinsurance and deductibles under that part) for members enrolled under this section with the organization and entitled to benefits under part B only

[1]P.L. 97-448, §309(b)(12), struck out "(1)", effective as if it had been so originally in P.L. 97-248. For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §114(c), p. 788.

is less than the average of the per capita rates of payment to be made under subsection (a)(1) at the beginning of an annual contract period for members enrolled under this section with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B only, respectively, the eligible organization shall provide to members enrolled under a risk-sharing contract under this section with the organization and entitled to benefits under part A and enrolled in part B, or enrolled in part B only, respectively, the additional benefits described in paragraph (3) which are selected by the eligible organization and which the Secretary finds are at least equal in value to the difference between that average per capita payment and the adjusted community rate (as so reduced); except that this paragraph shall not apply with respect to any organization which elects to receive a lesser payment to the extent that there is no longer a difference between the average per capita payment and adjusted community rate (as so reduced). If the Secretary finds that there is insufficient enrollment experience to determine an average of the per capita rates of payment to be made under subsection (a)(1) at the beginning of a contract period, the Secretary may determine such an average based on the enrollment experience of other contracts entered into under this section.[1]

(3) The additional benefits referred to in paragraph (2) are—

(A) the reduction of the premium rate or other charges made with respect to services furnished by the organization to members enrolled under this section, or

(B) the provision of additional health benefits, or both.

(4) A risk-sharing contract under this subsection may, at the option of an eligible organization, provide that the Secretary—

(A) will reimburse hospitals either for payment amounts determined in accordance with section 1886, or, if applicable, for the reasonable cost (as determined under section 1861(v)), of inpatient hospital services furnished to individuals enrolled with such organization pursuant to subsection (d), and

(B) will deduct the amount of such reimbursement for payment which would otherwise be made to such organization.[2]

(h)(1) If--

(A) the Secretary is not satisfied that an eligible organization has the capacity to bear the risk of potential losses under a risk-sharing contract under this section, or

(B) the eligible organization so elects or has an insufficient number of members to be eligible to enter into a risk-sharing contract under subsection (g)(1),

the Secretary may, if he is otherwise satisfied that the eligible organization is able to perform its contractual obligations effectively and efficiently, enter into a contract with such organization pursuant to which such organization is reimbursed on the basis of its reasonable cost (as defined in section 1861(v)) in the manner prescribed in paragraph (3).

(2) A reasonable cost reimbursement contract under this subsection may, at the option of such organization, provide that the Secretary—

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[1]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §114(d), with respect to a study of additional benefits selected and a report to Congress.

[2]P.L. 98-21, §602(g), added paragraph (4), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(A) will reimburse hospitals and skilled nursing facilities either for the reasonable cost (as determined under section 1861(v)) or for payment amounts determined in accordance with section 1886, as applicable, of services furnished to individuals enrolled with such organization pursuant to subsection (d), and

(B) will deduct the amount of such reimbursement from payment which would otherwise be made to such organization.

If such an eligible organization pays a hospital or skilled nursing facility directly, the amount paid shall not exceed the reasonable cost of the services (as determined under section 1861(v)) or the amount determined under section 1886, as applicable, unless such organization demonstrates to the satisfaction of the Secretary that such excess payments are justified on the basis of advantages gained by the organization.

(3) Payments made to an organization with a reasonable cost reimbursement contract shall be subject to appropriate retroactive corrective adjustment at the end of each contract year so as to assure that such organization is paid for the reasonable cost actually incurred (excluding any part of incurred cost found to be unnecessary in the efficient delivery of health services) or the amounts otherwise determined under section 1886 for the types of expenses otherwise reimbursable under this title for providing services covered under this title to individuals described in subsection (a)(1).

(4) Any reasonable cost reimbursement contract with an eligible organization under this subsection shall provide that the Secretary shall require, at such time following the expiration of each accounting period of the eligible organization (and in such form and in such detail) as he may prescribe—

(A) that the organization report to him in an independently certified financial statement its per capita incurred cost based on the types of components of expenses otherwise reimbursable under this title for providing services described in subsection (a)(1), including therein, in accordance with accounting procedures prescribed by the Secretary, its methods of allocating costs between individuals enrolled under this section and other individuals enrolled with such organization;

(B) that failure to report such information as may be required may be deemed to constitute evidence of likely overpayment on the basis of which appropriate collection action may be taken;

(C) that in any case in which an eligible organization is related to another organization by common ownership or control, a consolidated financial statement shall be filed and that the allowable costs for such organization may not include costs for the types of expense otherwise reimbursable under this title, in excess of those which would be determined to be reasonable in accordance with regulations (providing for limiting reimbursement to cost rather than charges to the eligible organization by related organizations and owners) issued by the Secretary; and

(D) that in any case in which compensation is paid by an eligible organization substantially in excess of what is normally paid for similar services by similar practitioners (regardless of method of compensation), such compensation may as appropriate be considered to constitute a distribution of profits.

(i)(1) Each contract under this section shall be for a term of at least one year, as determined by the Secretary, and may be made automatically renewable from term to term in the absence of notice by either party of intention to terminate at the end of the current term; except that the Secretary may terminate any such contract at any time (after such reasonable notice and opportunity for hearing to the eligible organization involved as he may provide in regulations), if he finds that the organization—

(A) has failed substantially to carry out the contract,

(B) is carrying out the contract in a manner inconsistent with the efficient and effective administration of this section, or

(C) no longer substantially meets the applicable conditions of subsections (b), (c), and (e).

(2) The effective date of any contract executed pursuant to this section shall be specified in the contract.

(3) Each contract under this section—

(A) shall provide that the Secretary, or any person or organization designated by him—

(i) shall have the right to inspect or otherwise evaluate (I) the quality, appropriateness, and timeliness of services performed under the contract and (II) the facilities of the organization when there is reasonable evidence of some need for such inspection, and

(ii) shall have the right to audit and inspect any books and records of the eligible organization that pertain (I) to the ability of the organization to bear the risk of potential financial losses, or (II) to services performed or determinations of amounts payable under the contract;

(B) shall require the organization with a risk-sharing contract to provide (and pay for) written notice in advance of the contract's termination, as well as a description of alternatives for obtaining benefits under this title, to each individual enrolled under this section with the organization; and

(C) shall require the organization to comply with subsections (a) and (c) of section 1318 of the Public Health Service Act[1] (relating to disclosure of certain financial information) and with the requirement of section 1301(c)(8) of such Act[2] (relating to liability arrangements to protect members); and

(D) shall contain such other terms and conditions not inconsistent with this section (including requiring the organization to provide the Secretary with such information) as the Secretary may find necessary and appropriate.

(4) The Secretary may not enter into a risk-sharing contract with an eligible organization if a previous risk-sharing contract with that organization under this section was terminated at the request of the organization within the preceding five-year period, except in circumstances which warrant special consideration, as determined by the Secretary.

(5) The authority vested in the Secretary by this section may be performed without regard to such provisions of law or regulations relating to the making, performance, amendment, or modification of contracts of the United States as the Secretary may determine to be inconsistent with the furtherance of the purpose of this title.

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[1] P.L. 78-410.
[2] P.L. 78-410.

PENALTIES[1]

SEC. 1877. [42 U.S.C. 1395nn] (a) Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this title, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both.

(b)(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

[1]See 18 U.S.C. 1028 and 1738 with respect to penalties relating to use of identification documents.

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, or home health agency (as those terms are defined in section 1861), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Whoever accepts assignments described in section 1842(b)(3)(B)(ii) and knowingly, willfully, and repeatedly violates the term of such assignments specified in subclause (I) of such section, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

PROVIDER REIMBURSEMENT REVIEW BOARD

SEC. 1878. [42 U.S.C. 1395oo] (a) Any provider of services which has filed a required cost report within the time specified in regulations may obtain a hearing with respect to such cost report by a Provider Reimbursement Review Board (hereinafter referred to as the "Board") which shall be established by the Secretary in accordance with subsection (h) and (except as provided in subsection (g)(2)) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1886 and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board[1], if—

(1) such provider—

(A)(i)[2] is dissatisfied with a final determination of the

[1] P.L. 98-21, §602(h)(1)(A), inserted "and (except as provided in subsection (g)(2)) any hospital which receives payments in amounts computed under subsection (b) or (d) of section 1886 and which has submitted such reports within such time as the Secretary may require in order to make payment under such section may obtain a hearing with respect to such payment by the Board", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2] P.L. 98-21, §602(h)(1)(B), inserted "(i)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

organization serving as its fiscal intermediary pursuant to section 1816 as to the amount of total program reimbursement due the provider for the items and services furnished to individuals for which payment may be made under this title for the period covered by such report, or[1]

(ii) is dissatisfied with a final determination of the Secretary as to the amount of the payment under subsection (b) or (d) of section 1886,[2]

(B) has not received such final determination from such intermediary on a timely basis after filing such report, where such report complied with the rules and regulations of the Secretary relating to such report, or

(C) has not received such final determination on a timely basis after filing a supplementary cost report, where such cost report did not so comply and such supplementary cost report did so comply,

(2) the amount in controversy is $10,000 or more, and

(3) such provider files a request for a hearing within 180 days after notice of the intermediary's final determination under paragraph (1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination,[3] or with respect to appeals pursuant to paragraph (1)(B) or (C), within 180 days after notice of such determination would have been received if such determination had been made on a timely basis.

(b) The provisions of subsection (a) shall apply to any group of providers of services if each provider of services in such group would, upon the filing of an appeal (but without regard to the $10,000 limitation), be entitled to such a hearing, but only if the matters in controversy involve a common question of fact or interpretation of law or regulations and the amount in controversy is, in the aggregate, $50,000 or more.

(c) At such hearing, the provider of services shall have the right to be represented by counsel, to introduce evidence, and to examine and cross-examine witnesses. Evidence may be received at any such hearing even though inadmissable[4] under rules of evidence applicable to court procedure.

(d) A decision by the Board shall be based upon the record made at such hearing, which shall include the evidence considered by the intermediary and such other evidence as may be obtained or received by the Board, and shall be supported by substantial evidence when the record is viewed as a whole. The Board shall have the power to affirm, modify, or reverse a final determination of the fiscal intermediary with respect to a cost report and to make any other revisions on matters covered by such cost report (including revisions adverse

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[1]P.L. 98-21, §602(h)(1)(C), inserted "or", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]P.L. 98-21, §602(h)(1)(C), added clause (ii), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3]P.L. 98-21, §602(h)(1)(D), struck out "(1)(A)" and substituted "(1)(A)(i), or with respect to appeals under paragraph (1)(A)(ii), 180 days after notice of the Secretary's final determination.", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[4]As in original. Should be "inadmissible".

to the provider of services) even though such matters were not considered by the intermediary in making such final determination.

(e) The Board shall have full power and authority to make rules and establish procedures, not inconsistent with the provisions of this title or regulations of the Secretary, which are necessary or appropriate to carry out the provisions of this section. In the course of any hearing the Board may administer oaths and affirmations. The provisions of subsections (d), (e), and (f)[1] of section 205 with respect to subpenas shall apply to the Board to the same extent as they apply to the Secretary with respect to title II.

(f)(1) A decision of the Board shall be final unless the Secretary, on his own motion, and within 60 days after the provider of services is notified of the Board's decision, reverses, affirms, or modifies the Board's decision. Providers shall have the right to obtain judicial review of any final decision of the Board, or of any reversal, affirmance, or modification by the Secretary, by a civil action commenced within 60 days of the date on which notice of any final decision by the Board or of any reversal, affirmance, or modification by the Secretary is received. Providers shall also have the right to obtain judicial review of any action of the fiscal intermediary which involves a question of law or regulations relevant to the matters in controversy whenever the Board determines (on its own motion or at the request of a provider of services as described in the following sentence) that it is without authority to decide the question, by a civil action commenced within sixty days of the date on which such determination is rendered. If a provider of services may obtain a hearing under subsection (a) and has filed a request for such a hearing, such provider may file a request for a determination by the Board of its authority to decide the question of law or regulations relevant to the matters in controversy (accompanied by such documents and materials as the Board shall require for purposes of rendering such determination). The Board shall render such determination in writing within thirty days after the Board receives the request and such accompanying documents and materials, and the determination shall be considered a final decision and not subject to review by the Secretary. If the Board fails to render such determination within such period, the provider may bring a civil action (within sixty days of the end of such period) with respect to the matter in controversy contained in such request for a hearing. Such action shall be brought in the district court of the United States for the judicial district in which the provider is located (or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)[2] or in the District Court for the District of Columbia and shall be tried pursuant to the applicable provisions under chapter 7 of title 5, United States Code, notwithstanding any other provisions in section 205. Any appeal to the Board or action for judicial review by providers which are under common ownership or control must be brought by such providers as a group with respect to any matter involving an issue common to such

[1] P.L. 91-452, "Organized Crime Control Act of 1970", §236, repealed Social Security Act §205(f), effective December 14, 1970.

[2] P.L. 98-21, §602(h)(2)(A), inserted "(or, in an action brought jointly by several providers, the judicial district in which the greatest number of such providers are located)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

providers.[1]

(2) Where a provider seeks judicial review pursuant to paragraph (1), the amount in controversy shall be subject to annual interest beginning on the first day of the first month beginning after the 180-day period as determined pursuant to subsection (a)(3) and equal to the rate of return on equity capital established by regulation pursuant to section 1861(v)(1)(B) and in effect at the time the civil action authorized under paragraph (1) is commenced, to be awarded by the reviewing court in favor of the prevailing party.

(3) No interest awarded pursuant to paragraph (2) shall be deemed income or cost for the purposes of determining reimbursement due providers under this Act.

(g)(1)[2] The finding of a fiscal intermediary that no payment may be made under this title for any expenses incurred for items or services furnished to an individual because such items or services are listed in section 1862 shall not be reviewed by the Board, or by any court pursuant to an action brought under subsection (f).

(2) The determinations and other decisions described in section 1886(d)(7) shall not be reviewed by the Board or by any court pursuant to an action brought under subsection (f) or otherwise.[3]

(h) The Board shall be composed of five members appointed by the Secretary without regard to the provisions of title 5, United States Code, governing appointments in the competitive services. Two of such members shall be representative of providers of services. All of the members of the Board shall be persons knowledgeable in the field of payment of providers of services[4], and at least one of them shall be a certified public accountant. Members of the Board shall be entitled to receive compensation at rates fixed by the Secretary, but not exceeding the rate specified (at the time the service involved is rendered by such members) for grade GS-18 in section 5332 of title 5, United States Code. The term of office shall be three years, except that the Secretary shall appoint the initial members of the Board for shorter terms to the extent necessary to permit staggered terms of office.

(i) The Board is authorized to engage such technical assistance as may be required to carry out its functions, and the Secretary shall, in addition, make available to the Board such secretarial, clerical, and other assistance as the Board may require to carry out its functions.

LIMITATION ON LIABILITY OF BENEFICIARY WHERE MEDICARE CLAIMS ARE DISALLOWED[5]

SEC. 1879. [42 U.S.C. 1395pp] (a) Where—

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[1]P.L. 98-21, §602(h)(2)(B), added the preceding sentence, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]P.L. 98-21, §602(h)(3), inserted "(1)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3]P.L. 98-21, §602(h)(3), added paragraph (2), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[4]P.L. 98-21, §602(h)(4), struck out "cost reimbursement" and substituted "payment of providers of services", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[5]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §119, with respect to private sector review initiative and restriction against recovery from beneficiaries.

(1) a determination is made that, by reason of section 1862(a)(1) or (9), payment may not be made under part A or part B of this title for any expenses incurred for items or services furnished an individual by a provider of services or by another person pursuant to an assignment under section 1842(b)(3)(B)(ii), and

(2) both such individual and such provider of services or such other person, as the case may be, did not know, and could not reasonably have been expected to know, that payment would not be made for such items or services under such part A or part B,

then to the extent permitted by this title, payment shall, notwithstanding such determination, be made for such items or services (and for such period of time as the Secretary finds will carry out the objectives of this title), as though section 1862(a)(1) and section 1862(a)(9) did not apply. In each such case the Secretary shall notify both such individual and such provider of services or such other person, as the case may be, of the conditions under which payment for such items or services was made and in the case of comparable situations arising thereafter with respect to such individual or such provider or such other person, each shall, by reason of such notice (or similar notices provided before the enactment of this section[1]), be deemed to have knowledge that payment cannot be made for such items or services or reasonably comparable items or services. Any provider or other person furnishing items or services for which payment may not be made by reason of section 1862(a)(1) or (9) shall be deemed to have knowledge that payment cannot be made for such items or services if the claim relating to such items or services involves a case, provider or other person furnishing services, procedure, or test, with respect to which such provider or other person has been notified by the Secretary (including notification by a utilization and quality control peer review organization) that a pattern of inappropriate utilization has occurred in the past, and such provider or other person has been allowed a reasonable time to correct such inappropriate utilization.[2]

(b) In any case in which the provisions of paragraphs (1) and (2) of subsection (a) are met, except that such provider or such other person, as the case may be, knew, or could be expected to know, that payment for such services or items could not be made under such part A or part B, then the Secretary shall, upon proper application filed within such time as may be prescribed in regulations, indemnify the individual (referred to in such paragraphs), subject to the deductible and coinsurance provisions of this title, for any payments received from such individual by such provider or such other person, as the case may be, for such items or services. Any payments made by the Secretary as indemnification shall be deemed to have been made to such provider or such other person, as the case may be, and shall be treated as overpayments, recoverable from such provider or such other person, as the case may be, under applicable provisions of law. In each such case the Secretary shall notify such individual of the conditions under which indemnification is made and in the case of comparable situations arising thereafter with respect to such

[1]October 30, 1972 [P.L. 92-603; 86 Stat. 1385].

[2]P.L. 97-248, §145, added the preceding sentence, effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

individual, he shall, by reason of such notice (or similar notices provided before the enactment of this section[1]), be deemed to have knowledge that payment cannot be made for such items or services.

(c) No payments shall be made under this title in any cases in which the provisions of paragraph (1) of subsection (a) are met, but both the individual to whom the items or services were furnished and the provider of service or other person, as the case may be, who furnished the items or services knew, or could reasonably have been expected to know, that payment could not be made for items or services under part A or part B by reason of section 1862(a)(1) or (a)(9).

(d) In any case arising under subsection (b) (but without regard to whether payments have been made by the individual to the provider or other person) or subsection (c), the provider or other person shall have the same rights that an individual has under section 1869(b) (when the determination is under part A) or section 1842(b)(3)(C) (when the determination is under part B) when the amount of benefit or payments is in controversy, except that such rights may, under prescribed regulations, be exercised by such provider or other person only after the Secretary determines that the individual will not exercise such rights under such sections.

(e) Where payment for inpatient hospital services or extended care services may not be made under part A of this title on behalf of an individual entitled to benefits under such part solely because of an unintentional, inadvertent, or erroneous action with respect to the transfer of such individual from a hospital or skilled nursing facility that meets the requirements of section 1861(e) or (j) by such a provider of services acting in good faith in accordance with the advice of a utilization review committee, quality control and peer review organization[2], or fiscal intermediary, or on the basis of a clearly erroneous administrative decision by a provider of services, the Secretary shall take such action with respect to the payment of such benefits as he determines may be necessary to correct the effects of such unintentional, inadvertent, or erroneous action.

INDIAN HEALTH SERVICE FACILITIES[3]

SEC. 1880. [42 U.S.C. 1395qq] (a) A hospital or skilled nursing facility of the Indian Health Service, whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act[4]), shall be eligible for payments under this title, notwithstanding sections 1814(c) and 1835(d), if and for so long as it meets all of the conditions and requirements for such payments which are applicable generally to hospitals or skilled nursing facilities (as the case may be) under this title.

(b) Notwithstanding subsection (a), a hospital or skilled nursing facility of the Indian Health Service which does not meet all of the

[1]October 30, 1972 [P.L. 92-603; 86 Stat. 1385].

[2]P.L. 97-248, §148(e), struck out "professional standards review organization" and substituted "quality control and peer review organization", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. For P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, see p. 792.

[3]See P.L. 94-437, "Indian Health Care Improvement Act", §401(c) with respect to appropriations, and §401(d) with respect to equality of right to coverage.

[4]P.L. 94-437.

conditions and requirements of this title which are applicable generally to hospitals or skilled nursing facilities (as the case may be), but which submits to the Secretary within six months after the date of the enactment of this section[1] an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for payments under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first 12 months after the month in which such plan is submitted.

(c) Notwithstanding any other provision of this title, payments to which any hospital or skilled nursing facility of the Indian Health Service is entitled by reason of this section shall be placed in a special fund to be held by the Secretary and used by him (to such extent or in such amounts as are provided in appropriation Acts) exclusively for the purpose of making any improvements in the hospitals and skilled nursing facilities of such Service which may be necessary to achieve compliance with the applicable conditions and requirements of this title. The preceding sentence shall cease to apply when the Secretary determines and certifies that substantially all of the hospitals and skilled nursing facilities of such Service in the United States are in compliance with such conditions and requirements.

(d) The annual report of the Secretary which is required by section 701 of the Indian Health Care Improvement Act[2] shall include (along with the matters specified in section 403 of such Act[3]) a detailed statement of the status of the hospitals and skilled nursing facilities of the Service in terms of their compliance with the applicable conditions and requirements of this title and of the progress being made by such hospitals and facilities (under plans submitted under subsection (b) and otherwise) toward the achievement of such compliance.

MEDICARE COVERAGE FOR END STAGE RENAL DISEASE PATIENTS

SEC. 1881. [42 U.S.C. 1395rr] (a) The benefits provided by parts A and B of this title shall include benefits for individuals who have been determined to have end-stage renal disease as provided in section 226A, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this title, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have end-stage renal disease and who are entitled to such benefits without regard to section 226A shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b)(1) Payments under this title with respect to services, in addition to services for which payment would otherwise be made under this title, furnished to individuals who have been determined to have end-stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-

[1] September 30, 1976 [P.L. 94-437; 90 Stat. 1400].
[2] P.L. 94-437.
[3] P.L. 94-437.

dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end-stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end-stage renal disease for which payments may be made under part B of this title, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this title, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1861(v) or section 1886 (if applicable)[1]. Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1833(b).

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end-stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1861(v)) and consistent with any regulations promulgated under paragraph (7)[2], the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals.[3]

(C) Such regulations, in the case of services furnished by proprietary providers and facilities may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1861(v)(1)(B).

(D) For purposes of section 1878, a renal dialysis facility shall be treated as a provider of services.

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[1]P.L. 98-21, §602(i), inserted "or section 1886 (if applicable)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]P.L. 97-35, §2145(a)(1), inserted "and consistent with any regulations promulgated under paragraph (7)", effective with respect to services furnished on or after October 1, 1981.

[3]P.L. 97-35, §2145(a)(2), struck out "Such regulations shall provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services (consistent with quality care), and shall include, to the extent determined feasible by the Secretary, a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.", effective with respect to services furnished on or after October 1, 1981.

(3) With respect to payments for physicians' services furnished to individuals determined to have end-stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis (which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)[1] for an aggregate of services provided over a period of time (as defined in regulations).

(4) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)) or on the basis of a method established under paragraph (7)[2].

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

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[1]P.L. 97-35, §2145(a)(3), inserted "(which effectively encourages the efficient delivery of dialysis services and provides incentives for the increased use of home dialysis)", effective with respect to services furnished on or after October 1, 1981.

[2]P.L. 97-35, §2145(a)(4), inserted "or on the basis of a method established under paragraph (7)", effective with respect to services furnished on or after October 1, 1981.

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event (except as may be provided in regulations under paragraph (7))[1] shall such target rate exceed 75[2] percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure (including methods established under paragraph (7))[3] which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) The Secretary shall provide by regulation for a method (or methods) for determining prospectively the amounts of payments to be made for dialysis services furnished by providers of services and renal dialysis facilities to individuals in a facility and to such individuals at home. Such method (or methods) shall provide for the prospective determination of a rate (or rates) for each mode of care based on a single composite weighted formula (which takes into account the mix of patients who receive dialysis services at a facility or at home and the relative costs of providing such services in such settings) for hospital-based facilities and such a single composite weighted formula for other renal dialysis facilities, or based on such other method or combination of methods which differentiate between hospital-based facilities and other renal dialysis facilities and which the Secretary determines, after detailed analysis, will more effectively encourage the more efficient delivery of dialysis services and will provide greater incentives for increased use of home dialysis than through the single composite weighted formulas. The Secretary shall provide for such exceptions to such methods as may be warranted by unusual circumstances (including the special circumstances of sole facilities located in isolated, rural areas). The Secretary may provide that such method will serve in lieu of any target reimbursement rate that would otherwise be established under paragraph (6).[4]

(8)[5] For purposes of this title, the term "home dialysis supplies and

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[1] P.L. 97-35, §2145(a)(5), inserted "(except as may be provided in regulations under paragraph (7))", effective with respect to services furnished on or after October 1, 1981.

[2] P.L. 97-35, §2145(a)(5), struck out "70" and substituted "75", effective with respect to services furnished on or after October 1, 1981.

[3] P.L. 97-35, §2145(a)(6), inserted "(including methods established under paragraph (7))", effective with respect to services furnished on or after October 1, 1981.

[4] P.L. 97-35, §2145(a)(8), inserted this paragraph (7), effective with respect to services furnished on or after October 1, 1981; regulations carrying out §1881(b)(7) shall be issued not later than October 1, 1981. [Those regulations were published May 11, 1983, in 48 Federal Register 21254.]

[5] P.L. 97-35, §2145(a)(7), redesignated the former paragraph (7) as paragraph (8), effective with respect to services furnished on or after October 1, 1981.

equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end-stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(9)[1] For purposes of this title, the term "self-care home dialysis support services", to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(10)[2] For purposes of this title, the term "self-care dialysis unit" means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(c)(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.

(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services

[1] P.L. 97-35, §2145(a)(7), redesignated the former paragraph (8) as paragraph (9), effective with respect to services furnished on or after October 1, 1981.

[2] P.L. 97-35, §2145(a)(7), redesignated the former paragraph (9) as paragraph (10), effective with respect to services furnished on or after October 1, 1981.

referred to in section 1861(s)(2)(F), or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient;

(B) developing criteria and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction; and

(E) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are

necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(d) Notwithstanding any provision to the contrary in section 226 any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this title with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this title), in such manner as may be prescribed by the Secretary in regulations, for all reasonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this title without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e)(1) Notwithstanding any other provision of this title, the Secretary may, pursuant to agreements with approved providers of services, renal dialysis facilities, and nonprofit entities which the Secretary finds can furnish equipment economically and efficiently, reimburse such providers, facilities, and nonprofit entities (without regard to the deductible and coinsurance provisions of this title) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider, facility, or other entity will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term "supportive equipment" includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f)(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this title, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this title (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) The Secretary shall submit to the Congress on July 1, 1979, and July 1 of each year thereafter a report on the end stage renal disease program, including but not limited to—

(1) the number of patients, nationally and by renal disease network, on dialysis (self-dialysis or otherwise) at home and in facilities;

(2) the number of new patients entering dialysis at home and in facilities during the year;

(3) the number of facilities providing dialysis and the utilization rates of those facilities;

(4) the number of kidney transplants, by source of donor organ;

(5) the number of patients awaiting organs for transplant;

(6) the number of transplant failures;

(7) the range of costs of kidney acquisitions, by type of facility and by region;

(8) the number of facilities providing transplants and the number of transplants performed per facility;

(9) patient mortality and morbidity rates;

(10) the average annual cost of hospitalization for ancillary problems in dialysis and transplant patients, and drug costs for transplant patients;

(11) medicare payment rates for dialysis, transplant procedures, and physician services, along with any changes in such rates during the year and the reasons for those changes;

(12) the results of cost-saving experiments;

(13) the results of basic kidney disease research conducted by the Federal Government, private institutions, and foreign governments;

(14) information on the activities of medical review boards and other networks organizations; and

(15) estimated program costs over the next five years.

VOLUNTARY CERTIFICATION OF MEDICARE SUPPLEMENTAL HEALTH INSURANCE POLICIES[1]

SEC. 1882. [42 U.S.C. 1395ss] (a) The Secretary shall establish a procedure whereby medicare supplemental policies (as defined in subsection (g)(1)) may be certified by the Secretary as meeting minimum standards and requirements set forth in subsection (c). Such procedure shall provide an opportunity for any insurer to submit any such policy, and such additional data as the Secretary finds necessary, to the Secretary for his examination and for his certification thereof as meeting the standards and requirements set forth in subsection (c). Such certification shall remain in effect if the insurer files a notarized statement with the Secretary no later than June 30 of each year stating that the policy continues to meet such standards and requirements and if the insurer submits such additional data as the Secretary finds necessary to independently verify the accuracy of such notarized statement. Where the Secretary determines such a policy meets (or continues to meet) such standards and requirements, he shall authorize the insurer to have printed on such policy (but only in accordance with such requirements and conditions as the Secretary may prescribe) an emblem which the Secretary shall cause to be designed for use as an indication that a policy has

[1]P.L. 96-265, §507(a), added §1882, effective June 9, 1980, except that the provisions of paragraph (4) of §1882(d) shall become effective on July 1, 1982.

The abbreviation "NAIC" as used in this section means National Association of Insurance Commissioners; see §1882(g)(2)(A).

received the Secretary's certification. The Secretary shall provide each State commissioner or superintendent of insurance with a list of all the policies which have received his certification.

(b)(1) Any medicare supplemental policy issued in any State which the Supplemental Health Insurance Panel (established under paragraph (2)) determines has established under State law a regulatory program that—

(A) provides for the application of standards with respect to such policies equal to or more stringent than the NAIC Model Standards (as defined in subsection (g)(2)(A));

(B) includes a requirement equal to or more stringent than the requirement described in subsection (c)(2); and

(C) provides for application of the standards and requirements described in subparagraphs (A) and (B) to all medicare supplemental policies (as defined in subsection (g)(1)) issued in such State,

shall be deemed (for so long as the Panel finds that such State regulatory program continues to meet the standards and requirements of this paragraph) to meet the standards and requirements set forth in subsection (c).

(2)(A) There is hereby established a panel (hereinafter in this section referred to as the "Panel") to be known as the Supplemental Health Insurance Panel. The Panel shall consist of the Secretary, who shall serve as the Chairman, and four State commissioners or superintendents of insurance, who shall be appointed by the President and serve at his pleasure. Such members shall first be appointed not later than December 31, 1980.

(B) A majority of the members of the Panel shall constitute a quorum, but a lesser number may conduct hearings.

(C) The Secretary shall provide such technical, secretarial, clerical, and other assistance as the Panel may require.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(E) Members of the Panel shall be allowed, while away from their homes or regular places of business in the performance of services for the Panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

(c) The Secretary shall certify under this section any medicare supplemental policy, or continue certification of such a policy, only if he finds that such policy—

(1) meets or exceeds (either in a single policy or, in the case of nonprofit hospital and medical service associations, in one or more policies issued in conjunction with one another) the NAIC Model Standards; and

(2) can be expected (as estimated for the entire period for which rates are computed to provide coverage, on the basis of incurred claims experience and earned premiums for such period and in accordance with accepted actuarial principles and practices) to return to policyholders in the form of aggregate benefits provided under the policy, at least 75 percent of the aggregate amount of premiums collected in the case of group policies and at least 60 percent of the aggregate amount of premiums collected in the case of individual policies.

For purposes of paragraph (2), policies issued as a result of solicitations of individuals through the mails or by mass media advertising (including both print and broadcast advertising) shall be deemed to be individual policies.

(d)(1) Whoever knowingly or willfully makes or causes to be made or induces or seeks to induce the making of any false statement or representation of a material fact with respect to the compliance of any policy with the standards and requirements set forth in subsection (c) or in regulations promulgated pursuant to such subsection, or with respect to the use of the emblem designed by the Secretary under subsection (a), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(2) Whoever falsely assumes or pretends to be acting, or misrepresents in any way that he is acting, under the authority of or in association with, the program of health insurance established by this title, or any Federal agency, for the purpose of selling or attempting to sell insurance, or in such pretended character demands, or obtains money, paper, documents, or anything of value, shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(3)(A) Whoever knowingly sells a health insurance policy to an individual entitled to benefits under part A or enrolled under part B of this title, with knowledge that such policy substantially duplicates health benefits to which such individual is otherwise entitled, other than benefits to which he is entitled under a requirement of State or Federal law (other than this title), shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(B) For purposes of this paragraph, benefits which are payable to or on behalf of an individual without regard to other health benefit coverage of such individual, shall not be considered as duplicative.

(C) Subparagraph (A) shall not apply with respect to the selling of a group policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations.

(4)(A) Whoever knowingly, directly or through his agent, mails or causes to be mailed any matter for a prohibited purpose (as determined under subparagraph (B)) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than 5 years, or both.

(B) For purposes of subparagraph (A), a prohibited purpose means the advertising, solicitation, or offer for sale of a medicare supplemental policy, or the delivery of such a policy, in or into any State in which such policy has not been approved by the State commissioner or superintendent of insurance. For purposes of this paragraph, a medicare supplemental policy shall be deemed to be approved by the commissioner or superintendent of insurance of a State if—

(i) the policy has been certified by the Secretary pursuant to subsection (c) or was issued in a State with an approved regulatory program (as defined in subsection (g)(2)(B));

(ii) the policy has been approved by the commissioners or superintendents of insurance in States in which more than 30 percent of such policies are sold; or

(iii) the State has in effect a law which the commissioner or superintendent of insurance of the State has determined gives him the authority to review, and to approve, or effectively bar from sale in the State, such policy;

except that such a policy shall not be deemed to be approved by a State commissioner or superintendent of insurance if the State notifies the Secretary that such policy has been submitted for approval to the State and has been specifically disapproved by such State after providing appropriate notice and opportunity for hearing pursuant to the procedures (if any) of the State.

(C) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a medicare supplemental policy into a State if such person has ascertained that the party insured under such policy to whom (or on whose behalf) such policy is mailed is located in such State on a temporary basis.

(D) Subparagraph (A) shall not apply in the case of a person who mails or causes to be mailed a duplicate copy of a medicare supplemental policy previously issued to the party to whom (or on whose behalf) such duplicate copy is mailed, if such policy expires not more than 12 months after the date on which the duplicate copy is mailed.[1]

(e) The Secretary shall provide to all individuals entitled to benefits under this title (and, to the extent feasible, to individuals about to become so entitled) such information as will permit such individuals to evaluate the value of medicare supplemental policies to them and the relationship of any such policies to benefits provided under this title.

(f)(1)(A) The Secretary shall, in consultation with Federal and State regulatory agencies, the National Association of Insurance Commissioners, private insurers, and organizations representing consumers and the aged, conduct a comprehensive study and evaluation of the comparative effectiveness of various State approaches to the regulation of medicare supplemental policies in (i) limiting marketing and agent abuse, (ii) assuring the dissemination of such information to individuals entitled to benefits under this title (and to other consumers) as is necessary to permit informed choice, (iii) promoting policies which provide reasonable economic benefits for such individuals, (iv) reducing the purchase of unnecessary duplicative coverage, (v) improving price competition, and (vi) establishing effective approved State regulatory programs described in subsection (b).

(B) Such study shall also address the need for standards or certification of health insurance policies, other than medicare supplemental policies, sold to individuals eligible for benefits under this title.

(C) The Secretary shall, no later than January 1, 1982, submit a report to the Congress on the results of such study and evaluation, accompanied by such recommendations as the Secretary finds warranted by such results with respect to the need for legislative or administrative changes to accomplish the objectives set forth in

[1] P.L. 96-265, §507(b), provides that the provisions of this paragraph (4) of §1882(d) shall become effective July 1, 1982.

subparagraphs (A) and (B), including the need for a mandatory Federal regulatory program to assure the marketing of appropriate types of medicare supplemental policies, and such other means as he finds may be appropriate to enhance effective State regulation of such policies.

(2) The Secretary shall submit to the Congress no later than July 1, 1982, and periodically as may be appropriate thereafter (but not less often than once every 2 years), a report evaluating the effectiveness of the certification procedure and the criminal penalties established under this section, and shall include in such reports an analysis of—

(A) the impact of such procedure and penalties on the types, market share, value, and cost to individuals entitled to benefits under this title of medicare supplemental policies which have been certified by the Secretary;

(B) the need for any change in the certification procedure to improve its administration or effectiveness; and

(C) whether the certification program and criminal penalties should be continued.

(g)(1) For purposes of this section, a medicare supplemental policy is a health insurance policy or other health benefit plan offered by a private entity to individuals who are entitled to have payment made under this title, which provides reimbursement for expenses incurred for services and items for which payment may be made under this title but which are not reimbursable by reason of the applicability of deductibles, coinsurance amounts, or other limitations imposed pursuant to this title; but does not include any such policy or plan of one or more employers or labor organizations, or of the trustees of a fund established by one or more employers or labor organizations (or combination thereof), for employees or former employees (or combination thereof) or for members or former members (or combination thereof) of the labor organizations. For purposes of this section, the term "policy" includes a certificate issued under such policy.

(2) For purposes of this section:

(A) The term "NAIC Model Standards" means the "NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act", adopted by the National Association of Insurance Commissioners on June 6, 1979, as it applies to medicare supplement[1] policies.

(B) The term "State with an approved regulatory program" means a State for which the Panel has made a determination under subsection (b)(1).

(C) The State in which a policy is issued means—

(i) in the case of an individual policy, the State in which the policyholder resides; and

(ii) in the case of a group policy, the State in which the holder of the master policy resides.

(h) The Secretary shall prescribe such regulations as may be necessary for the effective, efficient, and equitable administration of the certification procedure established under this section. The Secretary shall first issue final regulations to implement the certification procedure established under subsection (a) not later than March 1, 1981.

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[1]As in original. Probably should be "supplemental".

(i)(1) No medicare supplemental policy shall be certified and no such policy may be issued bearing the emblem authorized by the Secretary under subsection (a) until July 1, 1982. On and after such date policies certified by the Secretary may bear such emblem, including policies which were issued prior to such date and were subsequently certified, and insurers may notify holders of such certified policies issued prior to such date using such emblem in the notification.

(2)(A) The Secretary shall not implement the certification program established under subsection (a) with respect to policies issued in a State unless the Panel makes a finding that such State cannot be expected to have established, by July 1, 1982, an approved State regulatory program meeting the standards and requirements of subsection (b)(1). If the Panel makes such a finding, the Secretary shall implement such program under subsection (a) with respect to medicare supplemental policies issued in such State, until such time as the Panel determines that such State has a program that meets the standards and requirements of subsection (b)(1).

(B) Any finding by the Panel under subparagraph (A) shall be transmitted in writing, not later than January 1, 1982, to the Committee on Finance of the Senate and to the Committee on Interstate and Foreign Commerce and the Committee on Ways and Means of the House of Representatives and shall not become effective until 60 days after the date of its transmittal to the Committees of the Congress under this subparagraph. In counting such days, days on which either House is not in session because of an adjournment sine die or an adjournment of more than three days to a day certain are excluded in the computation.

(j) Nothing in this section shall be construed so as to affect the right of any State to regulate medicare supplemental policies which, under the provisions of this section, are considered to be issued in another State.

HOSPITAL PROVIDERS OF EXTENDED CARE SERVICES[1]

SEC. 1883. [42 U.S.C. 1395tt] (a)(1) Any hospital (other than a hospital which has in effect a waiver under subparagraph (A) of the last sentence of section 1861(e)) which has an agreement under section 1866 may (subject to subsection (b)) enter into an agreement with the Secretary under which its inpatient hospital facilities may be used for the furnishing of services of the type which, if furnished by a skilled nursing facility, would constitute extended care services.

(2)(A) Notwithstanding any other provision of this title, payment to any hospital for services furnished under an agreement entered into under this section shall be based upon the reasonable cost of the services as determined under subparagraph (B).

(B)(i) The reasonable cost of the services consists of the reasonable cost of routine services (determined under clause (ii)) and the reasonable cost of ancillary services (determined under clause (iii)).

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[1]P.L. 96-499, §904(a)(1), added §1883, effective on the date on which final regulations, promulgated by the Secretary to implement the section, are first issued; and those regulations shall be issued not later than June 1, 1981. [Such regulations were published July 20, 1982, in 47 Federal Register 31518.]

See P.L. 96-499, "Omnibus Reconciliation Act of 1980", §904(c), with respect to the Secretary's report to Congress on hospital providers of long-term care services ("swing-beds").

(ii) The reasonable cost of routine services furnished during any calendar year by a hospital under an agreement under this section is equal to the product of—

(I) the number of patient-days during the year for which the services were furnished, and

(II) the average reasonable cost per patient-day, such average reasonable cost per patient-day being the average rate per patient-day paid for routine services during the previous calendar year under the State plan (of the State in which the hospital is located) under title XIX to skilled nursing facilities located in the State and which meet the requirements specified in section 1902(a)(28), or, in the case of a hospital located in a State which does not have such a State plan, the average rate per patient-day paid for routine services during the previous calendar year under this title to skilled nursing facilities in such State.

(iii) The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(b) The Secretary may not enter into an agreement under this section with any hospital unless—

(1) except as provided under subsection (g), the hospital is located in a rural area and has less than 50 beds, and

(2) the hospital has been granted a certificate of need for the provision of long-term care services from the State health planning and development agency (designated under section 1521 of the Public Health Service Act[1]) for the State in which the hospital is located.

(c) An agreement with a hospital under this section shall, except as otherwise provided under regulations of the Secretary, be of the same duration and subject to termination on the same conditions as are agreements with skilled nursing facilities under section 1866 and shall, where not inconsistent with any provision of this section, impose the same duties, responsibilities, conditions, and limitations, as those imposed under such agreements entered into under section 1866; except that no such agreement with any hospital shall be in effect for any period during which the hospital does not have in effect an agreement under section 1866, or during which there is in effect for the hospital a waiver under subparagraph (A) of the last sentence of section 1861(e). A hospital with respect to which an agreement under this section has been terminated shall not be eligible to enter into a new agreement until a two-year period has elapsed from the termination date.

(d) Any agreement with a hospital under this section shall provide that payment for services will be made only for services for which payment would be made as post-hospital extended care services if those services had been furnished by a skilled nursing facility under an agreement entered into under section 1866; and any individual who is furnished services, for which payment may be made under an agreement under this section, shall, for purposes of this title (other than this section), be deemed to have received post-hospital extended care services in like manner and to the same extent as if the services furnished to him had been post-hospital extended care services

[1]P.L. 78-410.

furnished by a skilled nursing facility under an agreement under section 1866.

(e) During a period for which a hospital has in effect an agreement under this section, in order to allocate routine costs between hospital and long-term care services for purposes of determining payment for inpatient hospital services, the total reimbursement due for routine services from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital's total routine costs before calculations are made to determine title XVIII reimbursement for routine hospital services.

(f) A hospital which enters into an agreement with the Secretary under this section shall be required to meet those conditions applicable to skilled nursing facilities relating to discharge planning and the social services function (and staffing requirements to satisfy it) which are promulgated by the Secretary under section 1861(j)(15). Services furnished by such a hospital which would otherwise constitute post-hospital extended care services if furnished by a skilled nursing facility shall be subject to the same requirements applicable to such services when furnished by a skilled nursing facility except for those requirements the Secretary determines are inappropriate in the case of these services being furnished by a hospital under this section.

(g) The Secretary may enter into an agreement under this section on a demonstration basis with any hospital which does not meet the requirement of subsection (b)(1), if the hospital otherwise meets the requirements of this section.

PAYMENTS TO PROMOTE CLOSING AND CONVERSION OF UNDERUTILIZED HOSPITAL FACILITIES[1]

SEC. 1884. [42 U.S.C. 1395uu] (a) Any hospital may file an application with the Secretary (in such form and including such data and information as the Secretary may require) for establishment of a transitional allowance under this title with respect to the closing or conversion of an underutilized hospital facility. The Secretary also may establish procedures, consistent with this section, by which a hospital, before undergoing an actual closure or conversion of a hospital facility, can have a determination made as to whether or not it will be eligible for a transitional allowance under this section with respect to such closure or conversion.

(b) If the Secretary finds, after consideration of an application under subsection (a), that—

(1) the hospital's closure or conversion—

(A) is formally initiated after September 30, 1981,

(B) is expected to benefit the program under this title by (i) eliminating excess bed capacity, (ii) discontinuing an underutilized service for which there are adequate alternative sources, or (iii) substituting for the underutilized service some other service which is needed in the area, and

(C) is consistent with the findings of an appropriate health planning agency and with any applicable State program for reduction in the number of hospital beds in the State, and

(2) in the case of a complete closure of a hospital—

[1]P.L. 97-35, §2101(a), added §1884, effective only with respect to services furnished by a hospital during any accounting year beginning on or after October 1, 1981.

(A) the hospital is a private nonprofit hospital or a local governmental hospital, and

(B) the closure is not for replacement of the hospital,

the Secretary may include as an allowable cost in the hospital's reasonable cost (for the purpose of making payments to the hospital under this title) an amount (in this section referred to as a "transitional allowance"), as provided in subsection (c).

(c)(1) Each transitional allowance established shall be reasonably related to the prior or prospective use of the facility involved under this title and shall recognize—

(A) in the case of a facility conversion or closure (other than a complete closure of a hospital)—

(i) in the case of a private nonprofit or local governmental hospital, that portion of the hospital's costs attributable to capital assets of the facility which have been taken into account in determining reasonable cost for purposes of determining the amount of payment to the hospital under this title, and

(ii) in the case of any hospital, transitional operating cost increases related to the conversion or closure to the extent that such operating costs exceed amounts ordinarily reimbursable under this title; and

(B) in the case of complete closure of a hospital, the outstanding portion of actual debt obligations previously recognized as reasonable for purposes of reimbursement under this title, less any salvage value of the hospital.

(2) A transitional allowance shall be for a period (not to exceed 20 years) specified by the Secretary, except that, in the case of a complete closure described in paragraph (1)(B), the Secretary may provide for a lump-sum allowance where the Secretary determines that such a one-time allowance is more efficient and economical.

(3) A transitional allowance shall take effect on a date established by the Secretary, but not earlier than the date of completion of the closure or conversion concerned.

(4) A transitional allowance shall not be considered in applying the limits to costs recognized as reasonable pursuant to the third sentence of subparagraph (A) and subparagraph (L)(i) of section 1861(v)(1) of this Act, or in determining whether the reasonable cost exceeds the customary charges for a service for purposes of determining the amount to be paid to a provider pursuant to sections 1814(b) and 1833(a)(2) of this Act.

(d)[1] A hospital dissatisfied with a determination of the Secretary on its application under this section may obtain an informal or formal hearing, at the discretion of the Secretary, by filing (in such form and within such time period as the Secretary establishes) a request for such a hearing. The Secretary shall make a final determination on such application within 30 days after the last day of such hearing.

[1]P.L. 97-248, §128(a)(6), redesignated the second subsection (c) as subsection (d), effective only with respect to services furnished by a hospital during any accounting year beginning on or after October 1, 1981.

WITHHOLDING OF PAYMENTS FOR CERTAIN MEDICAID PROVIDERS[1]

SEC. 1885. [42 U.S.C.1395vv] (a) The Secretary may adjust, in accordance with this section, payments under parts A and B to any institution which has in effect an agreement with the Secretary under section 1866, and any person who has accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii), where such institution or person—

(1) has (or previously had) in effect an agreement with a State agency to furnish medical care and services under a State plan approved under title XIX, and

(2) from which (or from whom) such State agency (A) has been unable to recover overpayments made under the State plan, or (B) has been unable to collect the information necessary to enable it to determine the amount (if any) of the overpayments made to such institution or person under the State plan.

(b) The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall—

(1) assure that the authority under this section is exercised only on behalf of a State agency which demonstrates to the Secretary's satisfaction that it has provided adequate notice of a determination or of a need for information, and an opportunity to appeal such determination or to provide such information,

(2) determine the amount of the payment to which the institution or person would otherwise be entitled under this title which shall be treated as a setoff against overpayments under title XIX, and

(3) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under title XIX and to which the institution or person would otherwise be entitled under this title.

(c) Notwithstanding any other provision of this Act, from the trust funds established under sections 1817 and 1841, as appropriate, the Secretary shall pay to the appropriate State agency amounts recovered under this section to offset the State agency's overpayment under title XIX. Such payments shall be accounted for by the State agency as recoveries of overpayments under the State plan.

PAYMENT TO HOSPITALS FOR INPATIENT HOSPITAL SERVICES[2]

SEC. 1886. [42 U.S.C. 1395ww] (a)(1)(A)(i) The Secretary, in determining the amount of the payments that may be made under this title with respect to operating costs of inpatient hospital services (as defined in paragraph (4)) shall not recognize as reasonable (in the efficient delivery of health services) costs for the provision of such services by a hospital for a cost reporting period to the extent such costs exceed the applicable percentage (as determined under clause (ii)) of the average of such costs for all hospitals in the same grouping as such hospital for comparable time periods.

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[1] P.L. 97-35, §2104, added §1885, effective August 13, 1981.

[2] P.L. 97-248, §101(a)(1), added §1886, effective with respect to cost reporting periods beginning on or after October 1, 1982. [Interim-final regulations required by P.L. 97-248, §101(b)(2)(A), to implement §1886 were published September 30, 1982, in 47 Federal Register 43282].

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §101(b)(2)(B), with respect to requests for information.

See P.L. 98-21, "Social Security Amendments of 1983", §601(a)(3), with respect to the Congressional intent concerning implementation of a system for including capital-related costs, and §604(c), with respect to diagnosis-related group (DRG) prospective payment rate regulations.

(ii) For purposes of clause (i), the applicable percentage for hospital cost reporting periods beginning—

(I) on or after October 1, 1982, and before October 1, 1983, is 120 percent;

(II) on or after October 1, 1983, and before October 1, 1984, is 115 percent; and

(III) on or after October 1, 1984, is 110 percent.

(B)(i) For purposes of subparagraph (A) the Secretary shall establish case mix indexes for all short-term hospitals, and shall set limits for each hospital based upon the general mix of types of medical cases with respect to which such hospital provides services for which payment may be made under this title.

(ii) The Secretary shall set such limits for a cost reporting period of a hospital—

(I) by updating available data for a previous period to the immediate preceding cost reporting period by the estimated average rate of change of hospital costs industry-wide, and

(II) by projecting for the cost reporting period by the applicable percentage increase (as defined in subsection (b)(3)(B)).

(C) The limitation established under subparagraph (A) for any hospital shall in no event be lower than the allowable operating costs of inpatient hospital services (as defined in paragraph (4)) recognized under this title for such hospital for such hospital's last cost reporting period prior to the hospital's first cost reporting period for which this section is in effect.

(D) Subparagraph (A) shall not apply to cost reporting periods beginning on or after October 1, 1983.[1]

(2) The Secretary shall provide for such exemptions from, and exceptions and adjustments to, the limitation established under paragraph (1)(A) as he deems appropriate, including those which he deems necessary to take into account—

(A) the special needs of sole community hospitals, of new hospitals, of risk based health maintenance organizations, and of hospitals which provide atypical services or essential community services, and to take into account extraordinary circumstances beyond the hospital's control, medical and paramedical education costs, significantly fluctuating population in the service area of the hospital, and unusual labor costs,

(B) the special needs of psychiatric hospitals and of public or other hospitals that serve a significantly disportionate[2] number of patients who have low income or are entitled to benefits under part A of this title, and

(C) a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(3) The limitation established under paragraph (1)(A) shall not apply with respect to any hospital which—

(A) is located outside of a standard metropolitan statistical area, and

(B)(i) has less than 50 beds, and

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[1]P.L. 98-21, §601(a)(1), added subparagraph (D), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]As in original. Probably should be "disproportionate".

(ii) was in operation and had less than 50 beds on the date of the enactment of this section[1].

(4) For purposes of this section, the term "operating costs of inpatient hospital services" includes all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as[2] such costs are determined on an average per admission or per discharge basis (as determined by the Secretary). Such term does not include costs of approved educational activities, or, with respect to costs incurred in cost reporting periods beginning prior to October 1, 1986, capital-related costs, as defined by the Secretary.[3]

(b)(1) Notwithstanding section 1814(b),[4] but subject to the provisions of section[5] 1813, if the operating costs of inpatient hospital services (as defined in subsection (a)(4)) of a hospital (other than a subsection (d) hospital, as defined in subsection (d)(1)(B))[6] for a cost reporting period subject to this paragraph—

(A) are less than or equal to the target amount (as defined in paragraph (3)) for that hospital for that period, the amount of the payment with respect to such operating costs payable under part A on a per discharge or per admission basis (as the case may be) shall be equal to the amount of such operating costs, plus—

(i) 50 percent of the amount by which the target amount exceeds the amount of the operating costs, or

(ii) 5 percent of the target amount,

whichever is less; or

(B) are greater than the target amount, the amount of the payment with respect to such operating costs payable under part A on a per discharge or per admission basis (as the case may be) shall be equal to (i) the target amount, plus (ii) in the case of cost reporting periods beginning on or after October 1, 1982, and before October 1, 1984, 25 percent of the amount by which the amount of the operating costs exceeds the target amount;

except that in no case may the amount payable under this title (other than on the basis of a DRG prospective payment rate determined under subsection (d))[7] with respect to operating costs of inpatient hospital services exceed the maximum amount payable with respect to such costs pursuant to subsection (a).

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[1]September 3, 1982 [P.L. 97-248; 96 Stat. 324].

[2]P.L. 97-448, §309(b)(13), struck out "and" and substituted "as", effective with respect to cost reporting periods beginning on or after October 1, 1982, as if it had been included originally in P.L. 97-248.

[3]P.L. 98-21, §601(a)(2), added the preceding sentence, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[4]P.L. 97-448, §309(b)(14), struck out "sections 1814(b)" and substituted "section 1814(b),", effective with respect to cost reporting periods beginning on or after October 1, 1982, as if the amendment had been included originally in P.L. 97-248.

[5]P.L. 98-21, §601(b)(1), struck out "sections 1814(b), but subject to the provisions of sections" and substituted "section 1814(b) but subject to the provisions of section", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. Executed as if P.L. 98-21, §601(b)(1), strikes out "section 1814(b), but" instead of "sections 1814(b), but".

[6]P.L. 98-21, §601(b)(2), inserted "(other than a subsection (d) hospital, as defined in subsection (d)(1)(B))", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[7]P.L. 98-21, §601(b)(3), inserted "(other than on the basis of a DRG prospective payment rate determined under subsection (d))", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[(2) Repealed.[1]]

(3)(A) For purposes of this subsection, the term "target amount" means, with respect to a hospital for a particular 12-month cost reporting period—

(i) in the case of the first such reporting period for which this subsection is in effect, the allowable operating costs of inpatient hospital services (as defined in subsection (a)(4)) recognized under this title for such hospital for the preceding 12-month cost reporting period, and

(ii) in the case a later reporting period, the target amount for the preceding 12-month cost reporting period,

increased by the applicable percentage increase under subparagraph (B) for that particular cost reporting period.

(B) For purposes of subparagraph (A) and subsection (d) and except as provided in subsection (e)[2], the "applicable percentage increase" for any 12-month cost reporting period or fiscal year[3] shall be equal to 1 percentage point plus the percentage, estimated by the Secretary before the beginning of the period or year[4], by which the cost of the mix of goods and services (including personnel costs but excluding non-operating costs) comprising routine, ancillary, and special care unit inpatient hospital services, based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services, for such cost reporting period or fiscal year[5] will exceed[6] the cost of such mix of goods and services for the preceding 12-month cost reporting period or fiscal year[7].

(4)(A) The Secretary shall provide for an exemption from, or an exception and adjustment to, the method under this subsection for determining the amount of payment to a hospital where events beyond the hospital's control or extraordinary circumstances, including changes in the case mix of such hospital, create a distortion in the increase in costs for a cost reporting period (including any distortion in the costs for the base period against which such increase is measured). The Secretary may provide for such other exemptions from, and exceptions and adjustments to, such method as the Secretary deems appropriate, including those which he deems necessary to take into account a decrease in the inpatient hospital services that a hospital provides and that are customarily provided directly

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[1]P.L. 98-21, §601(b)(4), repealed paragraph (2), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. Until then, paragraph (2) reads as follows: "(2) Paragraph (1) shall not apply to cost reporting periods of hospitals beginning on or after October 1, 1985."

[2]P.L. 98-21, §601(b)(5), inserted "and subsection (d) and except as provided in subsection (e)", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3]P.L. 98-21, §601(b)(6), inserted "or fiscal year", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[4]P.L. 98-21, §601(b)(7), inserted "before the beginning of the period or year", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[5]P.L. 98-21, §601(b)(6), inserted "or fiscal year", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[6]P.L. 98-21, §601(b)(8), struck out "exceeds" and substituted "will exceed", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[7]P.L. 98-21, §601(b)(6), inserted "or fiscal year", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

by similar hospitals which results in a significant distortion in the operating costs of inpatient hospital services.

(B) Paragraph (1) shall not apply to payment of hospitals which is otherwise determined under paragraph (3) of section 1814(b).

(5) In the case of any hospital having any cost reporting period of other than a 12-month period, the Secretary shall determine the 12-month period which shall be used for purposes of this section.

(6) In the case of any hospital which becomes subject to the taxes under section 3111 of the Internal Revenue Code of 1954[1], with respect to any or all of its employees, for part or all of a cost reporting period, and was not subject to such taxes with respect to any or all of its employees for all or part of the 12-month base cost reporting period referred to in subsection (b)(3)(A)(i), the Secretary shall provide for an adjustment by increasing the base period amount described in such subsection for such hospital by an amount equal to the amount of such taxes which would have been paid or accrued by such hospital for such base period if such hospital had been subject to such taxes for all of such base period with respect to all its employees, minus the amount of any such taxes actually paid or accrued for such base period.[2]

(c)(1) The Secretary may provide, in his discretion, that payment with respect to services provided by a hospital in a State may be made in accordance with a hospital reimbursement control system in a State, rather than in accordance with the other provisions of this title, if the chief executive officer of the State requests such treatment and if—

(A) the Secretary determines that the system, if approved under this subsection, will apply (i) to substantially all non-

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[1]See P.L. 83-591, "Internal Revenue Code of 1954", §3111, p. 815.

[2]P.L. 98-21, §601(b)(9), inserted a new paragraph (6), effective with respect to cost reporting periods beginning on or after October 1, 1983, and repealed the former paragraph (6) effective with respect to cost reporting periods beginning on or after October 1, 1982. With respect to cost reporting periods, beginning before October 1, 1982, paragraph (6) reads as follows:

"(6)(A) The Secretary shall provide for an adjustment under this paragraph in the amount of payment otherwise provided a hospital under this subsection in the case of a hospital which, as of August 15, 1982, was subject to the taxes (hereinafter in this paragraph referred to as the 'FICA taxes') imposed by section 3111 of the Internal Revenue Code of 1954 and which is not subject to such taxes for part or all of a cost reporting period beginning on or after October 1, 1982.

"(B) In making such adjustment for a cost reporting period the Secretary shall estimate the amount of the operating costs of inpatient hospital services that would have resulted if the hospital was subject to the FICA taxes during that period. In making such estimate the Secretary shall reduce the amount of such FICA taxes that would have been paid (but not below zero) by the amount of costs which the hospital demonstrates to the satisfaction of the Secretary were incurred in the period for pensions, health, and other fringe benefits for employees (and former employees and family members) comparable to, and in lieu of, the benefits provided under title II and this title of the Social Security Act.

"(C) If a hospital's operating costs of inpatient hospital services estimated under subparagraph (B) is greater than the hospital's operating costs of inpatient hospital services determined without regard to this paragraph for a cost reporting period, then the Secretary shall reduce the amount otherwise paid the hospital (respecting operating costs of inpatient hospital services) under this title (taking into account any limitation under subsection (a)) [*] for the period by the amount by which—

"(i) the amount that would have been paid the hospital if (I) the amount of the operating costs of inpatient hospital services estimated under subparagraph (B) were treated as the amount of the operating costs of inpatient hospital services and (II) subsection (a) did not apply to the determination,

exceeds—

"(ii) the amount that would otherwise have been paid the hospital if subsection (a) (and this paragraph) did not apply;

except that, in making such determination for cost reporting periods beginning on or after October 1, 1984, clause (ii) of paragraph (1)(B) shall continue to apply."

*P.L. 97-448, §309(b)(15), struck out [from the repealed text] "subsection" and substituted "title (taking into account any limitation under subsection (a))", effective with respect to cost reporting periods beginning on or after October 1, 1982, as if it had been included originally in P.L. 97-248.

Federal acute care hospitals (as defined by the Secretary) in the State and (ii) to the review of at least 75 percent of all revenues or expenses in the State for inpatient hospital services and of revenues or expenses for inpatient hospital services provided under the State's plan approved under title XIX;

(B) the Secretary has been provided satisfactory assurances as to the equitable treatment under the system of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients;

(C) the Secretary has been provided satisfactory assurances that under the system, over 36-month periods (the first such period beginning with the first month in which this subsection applies to that system in the State), the amount of payments made under this title under such system will not exceed the amount of payments which would otherwise have been made under this title not using such system;

(D) the Secretary determines that the system will not preclude an eligible organization (as defined in section 1876(b)) from negotiating directly with hospitals with respect to the organization's rate of payment for inpatient hospital services; and[1]

(E) the Secretary determines that the system requires hospitals to meet the requirement of section 1866(a)(1)(G) and the system provides for the exclusion of certain costs in accordance with section 1862(a)(14) (except for such waivers thereof as the Secretary provides by regulation).[2]

The Secretary cannot deny the application of a State under this subsection on the ground that the State's hospital reimbursement control system is based on a payment methodology other than on the basis of a diagnosis-related group or on the ground that the amount of payments made under this title under such system must be less than the amount of payments which would otherwise have been made under this title not using such system. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining payment amounts at no more than a specified percentage increase above the payment amounts in a base period, the State has the option of applying such test (for inpatient hospital services under part A) on an aggregate payment basis or on the basis of the amount of payment per inpatient discharge or admission. If the Secretary determines that the conditions described in subparagraph (C) are based on maintaining aggregate payment amounts below a national average percentage increase in total payments under part A for inpatient hospital services, the Secretary cannot deny the application of a State under this subsection on the ground that the State's rate of increase in such payments for such services must be less than such national average rate of increase.[3]

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[1]P.L. 98-21, §601(c)(1)(C), added subparagraph (D), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]P.L. 98-21, §601(c)(1)(C), added subparagraph (E), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3]P.L. 98-21, §601(c)(1)(C), added this material at the end of paragraph (c)(1), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(2) In determining under paragraph (1)(C) the amount of payment which would otherwise have been made under this title for a State, the Secretary may provide for appropriate adjustment of such amount to take into account previous reductions effected in the amount of payments made under this title in the State due to the operation of the hospital reimbursement control system in the State if the system has resulted in an aggregate rate of increase in operating costs of inpatient hospital services (as defined in subsection (a)(4)) under this title for hospitals in the State which is less than the aggregate rate of increase in such costs under this title for hospitals in the United States.

(3) The Secretary shall discontinue payments under a system described in paragraph (1) if the Secretary—

(A) determines that the system no longer meets the requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),[1] or

(B) has reason to believe that the assurances described in subparagraph (B) or (C) of paragraph (1) (or, if applicable, in paragraph (5))[2] are not being (or will not be) met.

(4) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

(A) the requirements of subparagraphs (A), (B), (C), and (D) of paragraph (1) have been met with respect to the system, and

(B) with respect to that system a waiver of certain requirements of title XVIII of the Social Security Act has been approved on or before (and which is in effect as of) the date of the enactment of the Social Security Amendments of 1983[3], pursuant to section 402(a) of the Social Security Amendments of 1967[4] or section 222(a) of the Social Security Amendments of 1972[5].

With respect to a State system described in this paragraph, the Secretary shall judge the effectiveness of such system on the basis of its rate of increase or inflation in inpatient hospital payments for individuals under this title, as compared to the national rate of increase or inflation for such payments, with the State retaining the option to have the test applied on the basis of the aggregate payment or payments per inpatient admission or discharge during the three cost reporting periods beginning on or after October 1, 1983, after which such test, at the option of the Secretary, shall no longer apply, and such State systems shall be treated in the same manner as under other waivers.[6]

(5) The Secretary shall approve the request of a State under paragraph (1) with respect to a hospital reimbursement control system if—

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[1] P.L. 98-21, §601(c)(2)(A), struck out "requirement of paragraph (1)(A)" and substituted "requirements of subparagraphs (A), (D), and (E) of paragraph (1) and, if applicable, the requirements of paragraph (5),", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2] P.L. 98-21, §601(c)(2)(B), inserted "(or, if applicable, in paragraph (5))", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3] April 20, 1983 [P.L. 98-21; 97 Stat. 65].

[4] P.L. 90-248.

[5] P.L. 92-603.

[6] P.L. 98-21, §601(c)(3), added paragraph (4), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(A) the requirements of subparagraphs (A), (B), (C), (D), and (E) of paragraph (1) have been met with respect to the system;

(B) the Secretary determines that the system—

(i) is operated directly by the State or by an entity designated pursuant to State law,

(ii) provides for payment of hospitals covered under the system under a methodology (which sets forth exceptions and adjustments, as well as any method for changes in the methodology) by which rates or amounts to be paid for hospital services during a specified period are established under the system prior to the defined rate period, and

(iii) hospitals covered under the system will make such reports (in lieu of cost and other reports, identified by the Secretary, otherwise required under this title) as the Secretary may require in order to properly monitor assurances provided under this subsection;

(C) the State has provided the Secretary with satisfactory assurances that operation of the system will not result in any change in hospital admission practices which result in—

(i) a significant reduction in the proportion of patients (receiving hospital services covered under the system) who have no third-party coverage and who are unable to pay for hospital services,

(ii) a significant reduction in the proportion of individuals admitted to hospitals for inpatient hospital services for which payment is (or is likely to be) less than the anticipated charges for or costs of such services,

(iii) the refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital, or

(iv) the refusal to provide emergency services to any person who is in need of emergency services if the hospital provides such services;

(D) any change by the State in the system which has the effect of materially reducing payments to hospitals can only take effect upon 60 days notice to the Secretary and to the hospitals the payment to which is likely to be materially affected by the change; and

(E) the State has provided the Secretary with satisfactory assurances that in the development of the system the State has consulted with local governmental officials concerning the impact of the system on public hospitals.

The Secretary shall respond to requests of States under this paragraph within 60 days of the date the request is submitted to the Secretary.[1]

(6) If the Secretary determines that the assurances described in paragraph (1)(C) have not been met with respect to any 36-month period, the Secretary may reduce payments under this title to hospitals under the system in an amount equal to the amount by which the payment under this title under such system for such

[1]P.L. 98-21, §601(c)(3), added paragraph (5), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

period exceeded the amount of payments which would otherwise have been made under this title not using such system.[1]

(d)(1)(A) Notwithstanding section 1814(b) but subject to the provisions of section 1813, the amount of the payment with respect to the operating costs of inpatient hospital services (as defined in subsection (a)(4)) of a subsection (d) hospital (as defined in subparagraph (B)) for inpatient hospital discharges in a cost reporting period or in a fiscal year—

(i) beginning on or after October 1, 1983, and before October 1, 1984, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A), but determined without the application of subsection (a)), and

(II) the DRG percentage (as defined in subparagraph (C)) of the regional adjusted DRG prospective payment rate determined under paragraph (2) for such discharges;

(ii) beginning on or after October 1, 1984, and before October 1, 1986, is equal to the sum of—

(I) the target percentage (as defined in subparagraph (C)) of the hospital's target amount for the cost reporting period (as defined in subsection (b)(3)(A), but determined without the application of subsection (a)), and

(II) the DRG percentage (as defined in subparagraph (C)) of the applicable combined adjusted DRG prospective payment rate determined under subparagraph (D) for such discharges; or

(iii) beginning on or after October 1, 1986, is equal to the national adjusted DRG prospective payment rate determined under paragraph (3) for such discharges.

(B) As used in this section, the term "subsection (d) hospital" means a hospital located in one of the fifty States or the District of Columbia other than—

(i) a psychiatric hospital (as defined in section 1861(f)),

(ii) a rehabilitation hospital (as defined by the Secretary),

(iii) a hospital whose inpatients are predominantly individuals under 18 years of age, or

(iv) a hospital which has an average inpatient length of stay (as determined by the Secretary) of greater than 25 days;

and, in accordance with regulations of the Secretary, does not include a psychiatric or rehabilitation unit of the hospital which is a distinct part of the hospital (as defined by the Secretary).

(C) For purposes of this subsection, for cost reporting periods beginning, or discharges occurring—

(i) on or after October 1, 1983, and before October 1, 1984, the "target percentage" is 75 percent and the "DRG percentage" is 25 percent;

(ii) on or after October 1, 1984, and before October 1, 1985, the "target percentage" is 50 percent and the "DRG percentage" is 50 percent; and

[1]P.L. 98-21, §601(c)(3), added paragraph (6), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(iii) on or after October 1, 1985, and before October 1, 1986, the "target percentage" is 25 percent and the "DRG percentage" is 75 percent.

(D) For purposes of subparagraph (A)(ii)(II), the "applicable combined adjusted DRG prospective payment rate" for cost reporting periods beginning, or discharges occurring—

(i) on or after October 1, 1984, and before October 1, 1985, is a combined rate consisting of 25 percent of the national adjusted DRG prospective payment rate, and 75 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges; and

(ii) on or after October 1, 1985, and before October 1, 1986, is a combined rate consisting of 50 percent of the national adjusted DRG prospective payment rate, and 50 percent of the regional adjusted DRG prospective payment rate, determined under paragraph (3) for such discharges.

(2) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region, for which payment may be made under part A of this title. Each such rate shall be determined for hospitals located in urban or rural areas within the United States or within each such region, respectively, as follows:

(A) DETERMINING ALLOWABLE INDIVIDUAL HOSPITAL COSTS FOR BASE PERIOD.—The Secretary shall determine the allowable operating costs per discharge of inpatient hospital services for the hospital for the most recent cost reporting period for which data are available.

(B) UPDATING FOR FISCAL YEAR 1984.—The Secretary shall update each amount determined under subparagraph (A) for fiscal year 1984 by—

(i) updating for fiscal year 1983 by the estimated average rate of change of hospital costs industry-wide between the cost reporting period used under such subparagraph and fiscal year 1983 and the most recent case-mix data available, and

(ii) projecting for fiscal year 1984 by the applicable percentage increase (as defined in subsection (b)(3)(B)) for fiscal year 1984.

(C) STANDARDIZING AMOUNTS.—The Secretary shall standardize the amount updated under subparagraph (B) for each hospital by—

(i) excluding an estimate of indirect medical education costs,

(ii) adjusting for variations among hospitals by area in the average hospital wage level, and

(iii) adjusting for variations in case mix among hospitals.

(D) COMPUTING URBAN AND RURAL AVERAGES.—The Secretary shall compute an average of the standardized amounts determined under subparagraph (C) for the United States and for each region—

(i) for all subsection (d) hospitals located in an urban area within the United States or that region, respectively, and

(ii) for all subsection (d) hospitals located in a rural area within the United States or that region, respectively.

For purposes of this subsection, the term "region" means one of the nine census divisions, comprising the fifty States and the District of Columbia, established by the Bureau of the Census[1] for statistical and reporting purposes; the term "urban area" means an area within a Standard Metropolitan Statistical Area (as defined by the Office of Management and Budget) or within such similar area as the Secretary has recognized under subsection (a) by regulation; and the term "rural area" means any area outside such an area or similar area.

(E) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (D) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment rates which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(F) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) for that fiscal year.

(G) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS IN THE UNITED STATES AND IN EACH REGION.—For each discharge classified within a diagnosis-related group, the Secretary shall establish a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (D), reduced under subparagraph (E), and adjusted under subparagraph (F)) for hospitals located in a rural area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(H) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the national and regional DRG prospective payment rates computed under subparagraph (G) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

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[1]Department of Commerce.

(3) The Secretary shall determine a national adjusted DRG prospective payment rate, for each inpatient hospital discharge in a fiscal year after fiscal year 1984 involving inpatient hospital services of a subsection (d) hospital in the United States, and shall determine a regional adjusted DRG prospective payment rate for such discharges in each region for which payment may be made under part A of this title. Each such rate shall be determined for hospitals located in urban or rural areas within the United States and within each such region, respectively, as follows:

(A) UPDATING PREVIOUS STANDARDIZED AMOUNTS.—The Secretary shall compute an average standardized amount for hospitals located in an urban area and for hospitals located in a rural area within the United States and for hospitals located in an urban area and for hospitals located in a rural area within each region, equal to the respective average standardized amount computed for the previous fiscal year under paragraph (2)(D) or under this subparagraph, increased for fiscal year 1985 by the applicable percentage increase under subsection (b)(3)(B), and adjusted for subsequent fiscal years in accordance with the final determination of the Secretary under subsection (e)(4), and adjusted to reflect the most recent case-mix data available.

(B) REDUCING FOR VALUE OF OUTLIER PAYMENTS.—The Secretary shall reduce each of the average standardized amounts determined under subparagraph (A) by a proportion equal to the proportion (estimated by the Secretary) of the amount of payments under this subsection based on DRG prospective payment amounts which are additional payments described in paragraph (5)(A) (relating to outlier payments).

(C) MAINTAINING BUDGET NEUTRALITY.—The Secretary shall adjust each of such average standardized amounts as may be required under subsection (e)(1)(B) for that fiscal year.

(D) COMPUTING DRG-SPECIFIC RATES FOR URBAN AND RURAL HOSPITALS.—For each discharge classified within a diagnosis-related group, the Secretary shall establish for the fiscal year a national DRG prospective payment rate and shall establish a regional DRG prospective payment rate for each region, each of which is equal—

(i) for hospitals located in an urban area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted under subparagraph (C),[1] for the fiscal year for hospitals located in an urban area in the United States or that region, and

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group; and

(ii) for hospitals located in a rural area in the United States or that region (respectively), to the product of—

(I) the average standardized amount (computed under subparagraph (A), reduced under subparagraph (B), and adjusted under subparagraph (C)) for the fiscal year for hospitals located in a rural area in the United States or that region, and

[1] As in original. No closing parenthesis.

(II) the weighting factor (determined under paragraph (4)(B)) for that diagnosis-related group.

(E) ADJUSTING FOR DIFFERENT AREA WAGE LEVELS.—The Secretary shall adjust the proportion, (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs, of the DRG prospective payment rates computed under subparagraph (D) for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level.

(4)(A) The Secretary shall establish a classification of inpatient hospital discharges by diagnosis-related groups and a methodology for classifying specific hospital discharges within these groups.

(B) For each such diagnosis-related group the Secretary shall assign an appropriate weighting factor which reflects the relative hospital resources used with respect to discharges classified within that group compared to discharges classified within other groups.

(C) The Secretary shall adjust the classifications and weighting factors established under subparagraphs (A) and (B), for discharges in fiscal year 1986 and at least every four fiscal years thereafter, to reflect changes in treatment patterns, technology, and other factors which may change the relative use of hospital resources.

(D) The Commission (established under subsection (e)(2)) shall consult with and make recommendations to the Secretary with respect to the need for adjustments under subparagraph (C), based upon its evaluation of scientific evidence with respect to new practices, including the use of new technologies and treatment modalities. The Commission shall report to the Congress with respect to its evaluation of any adjustments made by the Secretary under subparagraph (C).

(5)(A)(i) The Secretary shall provide for an additional payment for a subsection (d) hospital for any discharge in a diagnosis-related group, the length of stay of which exceeds the mean length of stay for discharges within that group by a fixed number of days, or exceeds such mean length of stay by some fixed number of standard deviations, whichever is the fewer number of days.

(ii) For cases which are not included in clause (i), a subsection (d) hospital may request additional payments in any case where charges, adjusted to cost, exceed a fixed multiple of the applicable DRG prospective payment rate, or exceed such other fixed dollar amount, whichever is greater.

(iii) The amount of such additional payment under clauses (i) and (ii) shall be determined by the Secretary and shall approximate the marginal cost of care beyond the cutoff point applicable under clause (i) or (ii).

(iv) The total amount of the additional payments made under this subparagraph for discharges in a fiscal year may not be less than 5 percent nor more than 6 percent of the total payments projected or estimated to be made based on DRG prospective payment rates for discharges in that year.

(B) The Secretary shall provide for an additional payment amount for subsection (d) hospitals with indirect costs of medical education, in an amount computed in the same manner as the adjustment for

such costs under regulations (in effect as of January 1, 1983) under subsection (a)(2), except that in the computation under this subparagraph the Secretary shall use an educational adjustment factor equal to twice the factor provided under such regulations.

(C)(i) The Secretary shall provide for such exceptions and adjustments to the payment amounts established under this subsection as the Secretary deems appropriate to take into account the special needs of regional and national referral centers (including those hospitals of 500 or more beds located in rural areas), and of public or other hospitals that serve a significantly disproportionate number of patients who have low income or are entitled to benefits under part A of this title.

(ii) With respect to a subsection (d) hospital which is a "sole community hospital", payment under paragraph (1)(A) for any cost reporting period or fiscal year beginning on or after October 1, 1984, shall be determined under the formula provided in clause (i) of that paragraph with the target and DRG percentages determined under paragraph (1)(C)(i) (except that any reference to paragraph (2) shall be deemed, for this purpose, a reference to paragraph (3)). In the case of a sole community hospital that experiences, in a cost reporting period (beginning on or after October 1, 1983, and before October 1, 1986) compared to the previous cost reporting period, a decrease of more than 5 percent in its total number of inpatient cases due to circumstances beyond its control, the Secretary shall provide for such adjustment to the payment amounts under this subsection as may be necessary to fully compensate the hospital for the fixed costs it incurs in the period in providing inpatient hospital services, including the reasonable cost of maintaining necessary core staff and services. For purposes of this subpargraph, the term "sole community hospital" means a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to individuals in a geographical area who are entitled to benefits under part A.

(iii) The Secretary shall provide by regulation for such other exceptions and adjustments to such payment amounts under this subsection as the Secretary deems appropriate (including exceptions and adjustments that may be appropriate with respect to hospitals involved extensively in treatment for and research on cancer).

(iv) The Secretary may provide for such adjustments to the payment amounts under this subsection as the Secretary deems appropriate to take into account the unique circumstances of hospitals located in Alaska and Hawaii.

(D)(i) The Secretary shall estimate the amount of reimbursement made for services described in section 1862(a)(14) with respect to which payment was made under part B in the base reporting periods referred to in paragraph (2)(A) and with respect to which payment is no longer being made.

(ii) The Secretary shall provide for an adjustment to the payment for subsection (d) hospitals in each fiscal year so as appropriately to reflect the net amount described in clause (i).

(6) The Secretary shall provide for publication in the Federal Register, on or before the September 1 before each fiscal year (beginning with fiscal year 1984), of a description of the methodology

and data used in computing the adjusted DRG prospective payment rates under this subsection, including any adjustments required under subsection (e)(1)(B).

(7) There shall be no administrative or judical review under section 1878 or otherwise of—

(A) the determination of the requirement, or the proportional amount, of any adjustment effected pursuant to subsection (e)(1), and

(B) the establishment of diagnosis-related groups, of the methodology for the classification of discharges within such groups, and of the appropriate weighting factors thereof under paragraph (4).[1]

(e)(1)(A) For cost reporting periods of hospitals beginning in fiscal year 1984 or fiscal year 1985, the Secretary shall provide for such proportional adjustment in the applicable percentage increase (otherwise applicable to the periods under subsection (b)(3)(B)) as may be necessary to assure that—

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(I) for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1866(a)(1)(F)),

are not greater or less than—

(ii) the target percentage (as defined in subsection (d)(1)(C)) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before the date of the enactment of the Social Security Amendments of 1983[2] (excluding payments made under section 1866(a)(1)(F));

except that the adjustment made under this subparagraph shall apply only to subsection (d) hospitals and shall not apply for purposes of making computations under subsection (d)(2)(B)(ii) or subsection (d)(3)(A).

(B) For discharges occurring in fiscal year 1984 or fiscal year 1985, the Secretary shall provide under subsections (d)(2)(F) and (d)(3)(C) for such equal proportional adjustment in each of the average standardized amounts otherwise computed for that fiscal year as may be necessary to assure that—

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[1]P.L. 97-248, §110, added subsection (d), effective September 3, 1982.

P.L. 98-21, §601(d)(2), redesignated §1886(d) as §1814(j), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983. Until then, §1886(d) reads as follows:

"(d)(1) The lesser-of-cost-or-charges provisions (described in paragraph (2)) will not apply in the case of services provided by a class of provider of services if the Secretary determines and certifies to Congress that the failure of such provisions to apply to the services provided by that class of providers will not result in any increase in the amount of payments made for those services under this title. Such change will take effect with respect to services furnished, or cost reporting periods of providers, on or after such date as the Secretary shall provide in the certification. Such change for a class of provider shall be discontinued if the Secretary determines and notifies Congress that such change has resulted in an increase in the amount of payments made under this title for services provided by that class of provider.

"(2) The lesser-of-cost-or-charges provisions referred to in paragraph (1) are as follows:

"(A) Clause (B) of paragraph (1) and paragraph (2) of section 1814(b).

"(B) So much of subparagraph (A) of section 1833(a)(2) as provides for payment other than of the reasonable cost of such services, as determined under section 1861(v).

"(C) Subclause (II) of clause (i) and clause (ii) of section 1833(a)(2)(B)."

P.L. 98-21, §601(e), added this new subsection (d), effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

See P.L. 98-21, "Social Security Amendments of 1983", §601(g) with respect to determining whether a hospital is in an urban or rural area, and §604(b) with respect to a reduction in the payment amount under certain conditions.

[2]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

(i) the aggregate payment amounts otherwise provided under subsection (d)(1)(A)(i)(II) and (d)(5) for that fiscal year for operating costs of inpatient hospital services of hospitals (excluding payments made under section 1866(a)(1)(F)),

are not greater or less than—

(ii) the DRG percentage (as defined in subsection (d)(1)(C)) of the payment amounts which would have been payable for such services for those same hospitals for that fiscal year under this section under the law as in effect before the date of the enactment of the Social Security Amendments of 1983[1] (excluding payments made under section 1866(a)(1)(F)).

(2) The Director of the Congressional Office of Technology Assessment (hereinafter in this subsection referred to as the "Director" and the "Office", respectively) shall provide for appointment of a Prospective Payment Assessment Commission (hereinafter in this subsection referred to as the "Commission"), to be composed of independent experts appointed by the Director. In addition to carrying out its functions under subsection (d)(4)(D), the Commission shall review the applicable percentage increase factor described in subsection (b)(3)(B) and make recommendations to the Secretary on the appropriate percentage change which should be effected for hospital inpatient discharges under subsections (b) and (d) for fiscal years beginning with fiscal year 1986. In making its recommendations, the Commission shall take into account changes in the hospital market-basket described in subsection (b)(3)(B), hospital productivity, technological and scientific advances, the quality of health care provided in hospitals (including the quality and skill level of professional nursing required to maintain quality care), and long-term cost-effectiveness in the provision of inpatient hospital services.

(3) The Commission, not later than the April 1 before the beginning of each fiscal year (beginning with fiscal year 1986), shall report its recommendations to the Secretary on an appropriate change factor which should be used (instead of the applicable percentage increase described in subsection (b)(3)(B)) for inpatient hospital services for discharges in that fiscal year.

(4) Taking into consideration the recommendations of the Commission, the Secretary shall determine for each fiscal year (beginning with fiscal year 1986) the percentage change which will apply for purposes of this section as the applicable percentage increase (otherwise described in subsection (b)(3)(B)) for discharges in that fiscal year, and which will take into account amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality.

(5) The Secretary shall cause to have published for public comment in the Federal Register, not later than—

(A) the June 1 before each fiscal year (beginning with fiscal year 1986), the Secretary's proposed determination under paragraph (4) for that fiscal year, and

(B) the September 1 before such fiscal year after such consideration of public comment on the proposal as is feasible in the time available, the Secretary's final determination under such paragraph for that year.

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[1]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

The Secretary shall include in the publication referred to in subparagraph (A) for a fiscal year the report of the Commission's recommendations submitted under paragraph (3) for that fiscal year.

(6)(A) The Commission shall consist of 15 individuals. Members of the Commission shall first be appointed no later than April 1, 1984, for a term of three years, except that the Director may provide initially for such shorter terms as will insure that (on a continuing basis) the terms of no more than seven members expire in any one year.

(B) The membership of the Commission shall provide expertise and experience in the provision and financing of health care, including physicians and registered professional nurses, employers, third party payors, individuals skilled in the conduct and interpretation of biomedical, health services, and health economics research, and individuals having expertise in the research and development of technological and scientific advances in health care. The Director shall seek nominations from a wide range of groups, including—

(i) national organizations representing physicians, including medical specialty organizations and registered professional nurses and other skilled health professionals;

(ii) national organizations representing hospitals, including teaching hospitals;

(iii) national organizations representing manufacturers of health care products; and

(iv) national organizations representing the business community, health benefit programs, labor, and the elderly.

(C) Subject to such review as the Office deems necessary to assure the efficient administration of the Commission, the Commission may—

(i) employ and fix the compensation of such personnel (not to exceed 25) as may be necessary to carry out its duties;

(ii) seek such assistance and support as may be required in the performance of its duties from appropriate Federal departments and agencies;

(iii) enter into contracts or make other arrangements, as may be necessary for the conduct of the work of the Commission;

(iv) make advance, progress, and other payments which relate to the work of the Commission;

(v) provide transportation and subsistence for persons serving without compensation; and

(vi) prescribe such rules and regulations as it deems necessary with respect to the internal organization and operation of the Commission.

(D) While serving on the business of the Commission (including traveltime), a member of the Commission shall be entitled to compensation at the per diem equivalent of the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code; and while so serving away from home and his regular place of business, a member may be allowed travel expenses, as authorized by the Chairman of the Commission.

(E) In order to identify medically appropriate patterns of health resources use in accordance with paragraph (2), the Commission shall collect and assess information on medical and surgical procedures and services, including information on regional variations of medical

practice and lengths of hospitalization and on other patient-care data, giving special attention to treatment patterns for conditions which appear to involve excessively costly or inappropriate services not adding to the quality of care provided. In order to assess the safety, efficacy, and cost-effectiveness of new and existing medical and surgical procedures, the Commission shall, in coordination to the extent possible with the Secretary, collect and assess factual information, giving special attention to the needs of updating existing diagnosis-related groups, establishing new diagnosis-related groups, and making recommendations on relative weighting factors for such groups to reflect appropriate differences in resource consumption in delivering safe, efficacious, and cost-effective care. In collecting and assessing information, the Commission shall—

(i) utilize existing information, both published and unpublished, where possible, collected and assessed either by its own staff or under other arrangements made in accordance with this paragraph;

(ii) carry out, or award grants or contracts for, original research and experimentation, including clinical research, where existing information is inadequate for the development of useful and valid guidelines by the Commission; and

(iii) adopt procedures allowing any interested party to submit information with respect to medical and surgical procedures and services (including new practices, such as the use of new technologies and treatment modalities), which information the Commission shall consider in making reports and recommendations to the Secretary and Congress.

(F) The Commission shall have access to such relevant information and data as may be available from appropriate Federal agencies and shall assure that its activities, especially the conduct of original research and medical studies, are coordinated with the activities of Federal agencies.

(G)(i) The Office shall report annually to the Congress on the functioning and progress of the Commission and on the status of the assessment of medical procedures and services by the Commission.

(ii) The Office shall have unrestricted access to all deliberations, records, and data of the Commission, immediately upon its request.

(iii) In order to carry out its duties under this paragraph, the Office is authorized to expend reasonable and necessary funds as mutually agreed upon by the Office and the Commission. The Office shall be reimbursed for such funds by the Commission from the appropriations made with respect to the Commission.

(H) The Commission shall be subject to periodic audit by the General Accounting Office.

(I)(i) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this paragraph.

(ii) Eighty-five percent of such appropriation shall be payable from the Federal Hospital Insurance Trust Fund, and 15 percent of such appropriation shall be payable from the Federal Supplementary Medical Insurance Trust Fund.[1]

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[1]P.L. 98-21, §601(e), added this subsection, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

(f)(1) The Secretary shall maintain, for a period ending not earlier than September 30, 1988, a system for the reporting of costs of hospitals receiving payments computed under subsection (d).

(2) If the Secretary determines, based upon information supplied by a utilization and quality control peer review organization under part B of title XI, that a hospital, in order to circumvent the payment method established under subsection (b) or (d) of this section, has taken an action that results in the admission of individuals entitled to benefits under part A unnecessarily, unnecessary multiple admissions of the same such individuals, or other inappropriate medical or other practices with respect to such individuals, the Secretary may—

(A) deny payment (in whole or in part) under part A with respect to inpatient hospital services provided with respect to such an unnecessary admission (or subsequent admission of the same individual), or

(B) require the hospital to take other corrective action necessary to prevent or correct the inappropriate practice.

(3) The provisions of paragraphs (2), (3), and (4) of section 1862(d) shall apply to determinations under paragraph (2) of this subsection in the same manner as they apply to determinations made under section 1862(d)(1).[1]

(g)(1) If the Congress does not enact legislation, after the date of the enactment of this subsection[2] and before October 1, 1986, respecting the payment under this title for capital-related costs for inpatient hospital services, no payment may be made under this title for capital-related costs of capital expenditures (as defined in section 1122(g) and except as provided in section 1122(j)) for inpatient hospital services in a State, which expenditures are obligated after September 30, 1986, unless the State has an agreement with the Secretary under section 1122(b) and under the agreement the State has recommended approval of the capital expenditures.

(2) The Secretary shall provide that the amount which is allowable, with respect to reasonable costs of inpatient hospital services for which payment may be made under this title, for a return on equity capital for hospitals shall, for cost reporting periods beginning on or after the date of the enactment of this subsection[3], be equal to amounts otherwise allowable under regulations in effect on March 1, 1983, except that the rate of return to be recognized shall be equal to the average of the rates of interest, for each of the months any part of which is included in the reporting period, on obligations issued for purchase by the Federal Hospital Insurance Trust Fund.[4]

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[1]P.L. 98-21, §601(e), added this subsection, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[2]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

[3]April 20, 1983 [P.L. 98-21; 97 Stat. 65].

[4]P.L. 98-21, §601(e), added this subsection, effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

PAYMENT OF PROVIDER-BASED PHYSICIANS AND PAYMENT UNDER CERTAIN PERCENTAGE ARRANGEMENTS[1]

SEC. 1887. [42 U.S.C. 1395xx] (a)(1) The Secretary shall by regulation determine criteria for distinguishing those services (including inpatient and outpatient services) rendered in hospitals or skilled nursing facilities—

(A) which constitute professional medical services, which are personally rendered for an individual patient by a physician and which contribute to the diagnosis or treatment of an individual patient, and which may be reimbursed as physicians' services under part B, and

(B) which constitute professional services which are rendered for the general benefit to patients in a hospital or skilled nursing facility and which may be reimbursed only on a reasonable cost basis or on the bases described in section 1886[2].

(2)(A) For purposes of cost reimbursement, the Secretary shall recognize as a reasonable cost of a hospital or skilled nursing facility only that portion of the costs attributable to services rendered by a physician in such hospital or facility which are services described in paragraph (1)(B), apportioned on the basis of the amount of time actually spent by such physician rendering such services.

(B) In determining the amount of the payments which may be made with respect to services described in paragraph (1)(B), after apportioning costs as required by subparagraph (A), the Secretary may not recognize as reasonable (in the efficient delivery of health services) such portion of the provider's costs for such services to the extent that such costs exceed the reasonable compensation equivalent for such services. The reasonable compensation equivalent for any service shall be established by the Secretary in regulations.

(C) The Secretary may, upon a showing by a hospital or facility that it is unable to recruit or maintain an adequate number of physicians for the hospital or facility on account of the reimbursement limits established under this subsection, grant exceptions to such reimbursement limits as may be necessary to allow such provider to provide a compensation level sufficient to provide adequate physician services in such hospital or facility.[3]

(b)(1) Except as provided in paragraph (2), in the case of a provider of services which is paid under this title on a reasonable cost basis, or other basis related to costs that are reasonable, and which has entered into a contract for the purpose of having services furnished for or on behalf of it, the Secretary may not include any cost incurred by the provider under the contract if the amount payable under the contract by the provider for that cost is determined on the basis of a percentage (or other proportion) of the provider's charges, revenues, or claim for reimbursement.

[1]P.L. 97-248, §108(a), added §1887, effective September 3, 1982.
P.L. 97-248, §109(a)(1), amended the catchline by inserting "AND PAYMENT UNDER CERTAIN PERCENTAGE ARRANGEMENTS". For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §109(c), p. 788.

[2]P.L. 98-21, §602(j), inserted "or on the bases described in section 1886", effective with respect to items and services furnished by or under arrangements with a hospital beginning with its first cost reporting period that begins on or after October 1, 1983.

[3]See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §108(c) [as redesignated by P.L. 97-448, §309(a)(3)], with respect to regulations to carry out this subsection.

(2) Paragraph (1) shall not apply—

(A) to services furnished by a physician and described in subsection (a)(1)(B) and covered by regulations in effect under subsection (a), and

(B) under regulations established by the Secretary, where the amount involved under the percentage contract is reasonable and the contract—

(i) is a customary commercial business practice, or

(ii) provides incentives for the efficient and economical operation of the provider of services.[1]

[1]P.L. 97-248, §109(a)(2), added subsection (b). For the effective date, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §109(c), p. 788.

TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS[1]

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APPROPRIATION

SEC. 1901. [42 U.S.C. 1396] For the purpose of enabling each State, as far as practicable under the conditions in such State, to furnish (1) medical assistance on behalf of families with dependent

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[1]Title XIX of the Social Security Act is administered by the Health Care Financing Administration, Department of Health and Human Services (formerly the Department of Health, Education, and Welfare).

Title XIX appears in the United States Code as §§1396-1396p, subchapter XIX, chapter 7, Title 42.

– Regulations of the Secretary of Health and Human Services relating to Title XIX are contained in chapter IV, Title 42, and subtitle A, Title 45, Code of Federal Regulations.

See 31 U.S.C. 6504-6505 with respect to intergovernmental cooperation.

See 31 U.S.C. 7103-7111 with respect to joint funding simplification.

See P.L. 78-410, "Public Health Service Act", §304(d)(4), with respect to study of cost of diseases and adverse effects on humans which are environmentally related.

See P.L. 78-410, "Public Health Service Act", §1301(c)(3), with respect to the requirement that health maintenance organizations enroll individuals entitled to medical assistance under Title XIX.

See P.L. 88-352, "Civil Rights Act of 1964", §601, for prohibition against discrimination in Federally assisted programs.

See P.L. 89-73, "Older Americans Act of 1965", §§203 and 422(c), with respect to consultation, and §306(c) with respect to agreements with other agencies.

See P.L. 94-566, "Unemployment Compensation Amendments of 1976", §503, with respect to preservation of medicaid eligibility for individuals who cease to be eligible for supplemental security income benefits on account of cost-of-living increases in social security benefits.

[2]This table of contents does not appear in the law.

children and of aged, blind, or disabled individuals, whose income and resources are insufficient to meet the costs of necessary medical services, and (2) rehabilitation and other services to help such families and individuals attain or retain capability for independence or self-care, there is hereby authorized to be appropriated for each fiscal year a sum sufficient to carry out the purposes of this title. The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare, State plans for medical assistance.[1]

STATE PLANS FOR MEDICAL ASSISTANCE[2]

SEC. 1902. [42 U.S.C. 1396a] (a) A State plan for medical assistance must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State equal to not less than 40 per centum of the non-Federal share of the expenditures under the plan with respect to which payments under section 1903 are authorized by this title; and, effective July 1, 1969, provide for financial participation by the State equal to all of such non-Federal share or provide for distribution of funds from Federal or State sources, for carrying out the State plan, on an equalization or other basis which will assure that the lack of adequate funds from local sources will not result in lowering the amount, duration, scope, or quality of care and services available under the plan;

(3) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for medical assistance under the plan is denied or is not acted upon with reasonable promptness;

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan,[3] (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer

[1] See P.L. 94-437, "Indian Health Care Improvement Act", §402(b), (c), and (d) with respect to services provided to medicaid-eligible Indians and §403 with respect to reports.

[2] See P.L. 93-233, [Social Security Benefits—Increase], §13(c), with respect to medicaid eligibility for individuals receiving mandatory State supplementary payments.

[3] P.L. 91-648, §208(a)(3)(D), transferred to the U.S. Civil Service Commission, effective March 6, 1971, all powers, functions, and duties of the Secretary under subparagraph (A). Functions of the Commission were transferred to the Director of the Office of Personnel Management under §102 of Reorganization Plan No. 2 of 1978 (5 U.S.C. 1101 note), effective January 1, 1979.

program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each individual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18, United States Code;

(5) either provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan; or provide for the establishment or designation of a single State agency to administer or to supervise the administration of the plan, except that the determination of eligibility for medical assistance under the plan shall be made by the State or local agency administering the State plan approved under title I or XVI (insofar as it relates to the aged) if the State is eligible to participate in the State plan program established under title XVI, or by the agency or agencies administering the supplemental security income program established under title XVI or the State plan approved under part A of title IV if the State is not eligible to participate in the State plan program established under title XVI;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the plan;

(8) provide that all individuals wishing to make application for medical assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide—

(A) that the State health agency, or other appropriate State medical agency (whichever is utilized by the Secretary for the purpose specified in the first sentence of section 1864(a)), shall be responsible for establishing and maintaining health standards for private or public institutions in which recipients of medical assistance under the plan may receive care or services,

(B) for the establishment or designation of a State authority or authorities which shall be responsible for establishing and naintaining standards, other than those relating to health, for such institutions, and

(C) that any laboratory services paid for under such plan must be provided by a laboratory which meets the applicable requirements of section 1861(e)(9) or paragraphs (11) and (12) of section

1861(s), or, in the case of a laboratory which is in a rural health clinic, of section 1861(aa)(2)(G);[1]

(10) provide—

(A) for making medical assistance available, including at least the care and services listed in paragraphs (1) through (5) and (17) of section 1905(a), to—

(i) all individuals receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A or part E of title IV (including pregnant women deemed by the State to be receiving such aid as authorized in section 406(g) and individuals considered by the State to be receiving such aid as authorized under section 414(g)), or with respect to whom supplemental security income benefits are being paid under title XVI; and

(ii) at the option of the State, to any group or groups of individuals described in section 1905(a) (or, in the case of individuals described in section 1905(a)(i), to any reasonable categories of such individuals) who are not individuals described in clause (i) of this subparagraph but—

(I) who meet the income and resources requirements of the appropriate State plan described in clause (i) or the supplemental security income program (as the case may be),

(II) who would meet the income and resources requirements of the appropriate State plan described in clause (i) if their work-related child care costs were paid from their earnings rather than by a State agency as a service expenditure,

(III) who would be eligible to receive aid under the appropriate State plan described in clause (i) if coverage under such plan was as broad as allowed under Federal law,

(IV) with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, aid or assistance under the appropriate State plan described in clause (i), supplemental security income benefits under title XVI, or a State supplementary payment;

(V) who are in a medical institution, who meet the resource requirements of the appropriate State plan described in clause (i) or the supplemental security income program, and whose income does not exceed a separate income standard established by the State which is consistent with the limit established under section 1903(f)(4)(C), or

(VI) who would be eligible under the State plan under this title if they were in a medical institution, with respect to whom there has been a determination that but for the provision of home or community-based services described in section 1915(c) they would require the level of care provided in a hospital, skilled nursing

[1] P.L. 97-35, §2175(d)(1)(C), added subparagraph (C). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2175(d)(2), p. 783.

facility or intermediate care facility the cost of which could be reimbursed under the State plan, and who will receive home or community-based services pursuant to a waiver granted by the Secretary under section 1915(c);[1]

(B) that the medical assistance made available to any individual described in subparagraph[2] (A)—

(i) shall not be less in amount, duration, or scope than the medical assistance made available to any other such individual, and

(ii) shall not be less in amount, duration, or scope than the medical assistance made available to individuals not described in subparagraph[3] (A);

(C) that if medical assistance is included for any group of individuals described in section 1905(a) who are not described in subparagraph (A), then—

(i) the plan must include a description of (I) the criteria for determining eligibility of individuals in the group for such medical assistance,[4] (II) the amount, duration, and scope of medical assistance made available to individuals in the group, and (III) the single standard to be employed in determining income and resource eligibility for all such groups, and the methodology to be employed in determining such eligibility, which shall be the same methodology which would be employed under the supplemental security income program in the case of groups consisting of aged, blind, or disabled individuals in a State in which such program is in effect, and which shall be the same methodology which would be employed under the appropriate State plan (described in subparagraph (A)(i)) to which such group is most closely categorically related in the case of other groups[5];

(ii) the plan must make available medical assistance—

(I) to individuals under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i)[6], and

(II) to pregnant women, during the course of their pregnancy, who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A);

(iii) such medical assistance must include (I) with respect to children under 18 and individuals entitled to

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[1]P.L. 97-35, §2171(a)(1), amended subparagraph (A) in its entirety, effective August 13, 1981.
P.L. 97-248, §137(b)(7), amended subparagraph (A) in its entirety, effective as if it had been originally included as part of P.L. 97-35.

[2]P.L. 97-35, §2171(a)(2), struck out "clause" and substituted "subparagraph", effective August 13, 1981.

[3]P.L. 97-35, §2171(a)(2), struck out "clause" and substituted "subparagraph", effective August 13, 1981.

[4]P.L. 97-248, §137(b)(8)(A), struck out "and" and substituted a comma, effective as if it had been originally included as part of P.L. 97-35.

[5]P.L. 97-248, §137(b)(8)(B), inserted subclause (III), effective as if it had been originally included as part of P.L. 97-35.

[6]P.L. 97-248, §137(b)(9), struck out "described in section 1905(a)(i)" and substituted "under the age of 18 who (but for income and resources) would be eligible for medical assistance as an individual described in subparagraph (A)(i)", effective as if it had been originally included as part of P.L. 97-35.

institutional services, ambulatory services, and (II) with respect to pregnant women, prenatal care and delivery services; and

(iv) if such medical assistance includes services in institutions for mental diseases or intermediate care facility services for the mentally retarded (or both) for any such group, it also must include for all groups covered at least the care and services listed in paragraphs (1) through (5) and (17) of section 1905(a) or the care and services listed in any 7 of the paragraphs numbered (1) through (17) of such section; and[1]

(D) for the inclusion of home health services for any individual who, under the State plan, is entitled to skilled nursing facility services;[2]

except that (I) the making available of the services described in paragraph (4), (14), or (16) of section 1905(a) to individuals meeting the age requirements prescribed therein shall not, by reason of this paragraph (10), require the making available of any such services, or the making available of such services of the same amount, duration, and scope, to individuals of any other ages, (II) the making available of supplementary medical insurance benefits under part B of title XVIII to individuals eligible therefor (either pursuant to an agreement entered into under section 1843 or by reason of the payment of premiums under such title by the State agency on behalf of such individuals), or provision for meeting part or all of the cost of deductibles, cost sharing, or similar charges under part B of title XVIII for individuals eligible for benefits under such part, shall not, by reason of this paragraph (10), require the making available of any such benefits, or the making available of services of the same amount, duration, and scope, to any other individuals, (III) the making available of medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in clause (A) to any classification of individuals approved by the Secretary with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them, a State supplementary payment shall not, by reason of this paragraph (10), require the making available of any such assistance, or the making available of such assistance of the same amount, duration, and scope, to any other individuals not described in clause (A) and (IV) the imposition of a deductible, cost sharing, or similar charge for any item or service furnished to an individual not eligible for the exemption under section 1916(a)(2) or (b)(2) shall not require the imposition of a deductible, cost sharing, or similar charge for the same item or service furnished to an individual who is eligible for such exemption[3]; [4]

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[1] P.L. 97-35, §2171(a)(3), amended subparagraph (C) in its entirety, effective August 13, 1981.
P.L. 97-248, §137(a)(3), amended P.L. 97-35, §2171(a)(3), effective as if it had been originally included in P.L. 97-35.

[2] P.L. 97-35, §2171(a)(3), added subparagraph (D), effective August 13, 1981.

[3] P.L. 97-248, §131(c) [as redesignated by P.L. 97-448, §309(a)(8); 96 Stat. 2408], added subclause (IV), effective October 1, 1982, except where State legislation is needed. For the effective date where State legislation is needed, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §131(d)(2) [as redesignated by P.L. 97-448, §309(a)(8); 96 Stat. 2408], p. 792.

[4] See P.L. 93-66, [Cost-of-Living Increase in Social Security Benefits], §§230-232, for provisions relating to medicaid.

(11)(A) provide for entering into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan, and (B) effective July 1, 1969, provide, to the extent prescribed by the Secretary, for entering into agreements, with any agency, institution, or organization receiving payments under (or through an allotment under)[1] title V, (i) providing for utilizing such agency, institution, or organization in furnishing care and services which are available under such title or allotment[2] and which are included in the State plan approved under this section and (ii) making such provision as may be appropriate for reimbursing such agency, institution, or organization for the cost of any such care and services furnished any individual for which payment would otherwise be made to the State with respect to him under section 1903;

(12) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in the diseases of the eye or by an optometrist, whichever the individual may select;

(13) provide—

(A)[3] for payment of the hospital, skilled nursing facility, and intermediate care facility[4] services provided under the plan through the use of rates (determined in accordance with methods and standards developed by the State and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care (under conditions similar to those described in section 1861(v)(1)(G)), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1861(v)(1)(G))[5]) which the State finds, and makes assurances satisfactory to the Secretary, are reasonable and adequate to meet the costs which must be incurred by efficiently and economically operated facilities in order to provide care and services in conformity with applicable State and Federal laws, regulations, and quality and safety standards and to assure that individuals eligible for medical assistance have reasonable access (taking into

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[1] P.L. 97-35, §2193(c)(9)(sic)(A), struck out "for part or all of the cost of plans or projects under" and substituted "under (or through an allotment under)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[2] P.L. 97-35, §2193(c)(9)(sic)(B), struck out "plan or project under title V" and substituted "title or allotment". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2194(a), p. 784.

[3] P.L. 97-35, §2171(b), struck out subparagraph (A), effective August 13, 1981.

P.L. 97-35, §2173(a)(1)(C), redesignated subparagraph (E) as subparagraph (A), effective August 13, 1981.

[4] P.L. 97-35, §2173(a)(1)(B)(i), struck out "skilled nursing facility" and substituted "hospital, skilled nursing facility,", effective August 13, 1981.

[5] P.L. 97-35, §2173(a)(1)(B)(ii), inserted "and which, in the case of hospitals, take into account the situation of hospitals which serve a disproportionate number of low income patients with special needs and provide, in the case of hospital patients receiving services at an inappropriate level of care (under conditions similar to those described in section 1861(v)(1)(G)), for lower reimbursement rates reflecting the level of care actually received (in a manner consistent with section 1861(v)(1)(G))", effective August 13, 1981.

account geographic location and reasonable travel time) to inpatient hospital services of adequate quality[1]; and such State makes further assurances, satisfactory to the Secretary, for the filing of uniform cost reports by each hospital, skilled nursing facility, and intermediate care facility[2] and periodic audits by the State of such reports; and

(B)[3] for payment for services described in section 1905(a)(2)(B) provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1833(a)(3), or, in the case of services to which those regulations do not apply, on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph;

[(C) Stricken.[4]]

[(D) Stricken.[5]]

(14) provide that enrollment fees, premiums, or similar charges, and deductions, cost sharing, or similar charges, may be imposed only as provided in section 1916;[6]

(15) in the case of eligible individuals 65 years of age or older who are covered by either or both of the insurance programs established by title XVIII, provide where, under the plan, all of any deductible, cost sharing, or similar charge imposed with respect to such individual under the insurance program established by such title is not met, the portion thereof which is met shall be determined on a basis reasonably related (as determined in accordance with standards approved by the Secretary and included in the plan) to such individual's income or his income and resources;

(16) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of medical assistance under the plan to individuals who are residents of the State but are absent therefrom;

(17) include reasonable standards (which shall be comparable for all groups and may, in accordance with standards prescribed by the Secretary, differ with respect to income levels, but only in the case of applicants or recipients of assistance under the plan who are not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, based on the

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[1]P.L. 97-35, §2173(a)(1)(B)(iii), inserted "and to assure that individuals eligible for medical assistance have reasonable access (taking into account geographic location and reasonable travel time) to inpatient hospital services of adequate quality", effective August 13, 1981.

[2]P.L. 97-35, §2173(a)(1)(B)(iv), struck out "skilled nursing or" and substituted "hospital, skilled nursing facility, and", effective August 13, 1981.

[3]P.L. 97-35, §2171(b), struck out subparagraph (B), effective August 13, 1981.

P.L. 97-35, §2173(a)(1)(C), redesignated subparagraph (F) as subparagraph (B), effective August 13, 1981.

[4]P.L. 97-35, §2171(b), struck out subparagraph (C), effective August 13, 1981.

[5]P.L. 97-35, §2173(a)(1)(A), struck out subparagraph (D), effective August 13, 1981.

[6]P.L. 97-248, §131(a), amended paragraph (14) in its entirety, effective October 1, 1982, except where State legislation is needed. For the effective date where State legislation is needed, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act", §131(d)(2) [as redesignated by P.L. 97-448, §309(a)(8); 96 Stat. 2408], p. 792.

variations between shelter costs in urban areas and in rural areas) for determining eligibility for and the extent of medical assistance under the plan which (A) are consistent with the objectives of this title, (B) provide for taking into account only such income and resources as are, as determined in accordance with standards prescribed by the Secretary, available to the applicant or recipient and (in the case of any applicant or recipient who would, except for income and resources, be eligible for aid or assistance in the form of money payments under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or to have paid with respect to him supplemental security income benefits under title XVI) as would not be disregarded (or set aside for future needs) in determining his eligibility for such aid, assistance, or benefits, (C) provide for reasonable evaluation of any such income or resources, and (D) do not take into account the financial responsibility of any individual for any applicant or recipient of assistance under the plan unless such applicant or recipient is such individual's spouse or such individual's child who is under age 21 or (with respect to States eligible to participate in the State program established under title XVI), is blind or permanently and totally disabled, or is blind or disabled as defined in section 1614 (with respect to States which are not eligible to participate in such program); and provide for flexibility in the application of such standards with respect to income by taking into account, except to the extent prescribed by the Secretary, the costs (whether in the form of insurance premiums or otherwise) incurred for medical care or for any other type of remedial care recognized under State law;

(18) comply with the provisions of section 1917 with respect to liens, adjustments and recoveries of medical assistance correctly paid, and transfers of assets;[1]

(19) provide such safeguards as may be necessary to assure that eligibility for care and services under the plan will be determined, and such care and services will be provided, in a manner consistent with simplicity of administration and the best interests of the recipients;

(20) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

[1] P.L. 97-248, §132(a), amended paragraph (18) in its entirety, effective September 3, 1982, except that §1917(c)(2)(B) shall not apply with respect to a transfer of assets which took place before that date.

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a periodical[1] determination of his need for continued treatment in the institution; and

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients 65 years of age or older who would otherwise need care in such institutions, including appropriate medical treatment and other aid or assistance; for services referred to in section 3(a)(4)(A)(i) and (ii), section 603(a)(1)(A)(i) and (ii)[2], or section 1603(a)(4)(A)(i) and (ii) which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out;

[(D) Stricken.[3]]

(21) if the State plan includes medical assistance in behalf of individuals 65 years of age or older who are patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing facilities, and other alternatives to care in public institutions for mental diseases;

(22) include descriptions of (A) the kinds and numbers of professional medical personnel and supporting staff that will be used in the administration of the plan and of the responsibilities they will have, (B) the standards, for private or public institutions in which recipients of medical assistance under the plan may receive care or services, that will be utilized by the State authority or authorities responsible for establishing and maintaining such standards, (C) the cooperative arrangements with State health agencies and State vocational rehabilitation agencies entered into with a view to maximum utilization of and coordination of the provision of medical assistance with the services administered or supervised by such agencies, and (D) other standards and methods that the State will use to assure that medical or remedial care and services provided to recipients of medical assistance are of high quality;

(23) except as provided in section 1915 and[4] except in the case of Puerto Rico, the Virgin Islands, and Guam, provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services,

[1] As in original. Should be "periodic".
[2] As in original. P.L. 93-647, "Social Services Amendments of 1974", §3(b), repealed Title VI.
[3] P.L. 97-35, §2173(a)(2)(C), struck out subparagraph (D), effective August 13, 1981.
[4] P.L. 97-35, §2175(a)(1), inserted "except as provided in section 1915 and", effective August 13, 1981.

or arranges for their availability, on a prepayment basis), who undertakes to provide him such services;[1]

(24) effective July 1, 1969, provide for consultative services by health agencies and other appropriate agencies of the State to hospitals, nursing facilities, home health agencies, clinics, laboratories, and such other institutions as the Secretary may specify in order to assist them (A) to qualify for payments under this Act, (B) to establish and maintain such fiscal records as may be necessary for the proper and efficient administration of this Act, and (C) to provide information needed to determine payments due under this Act on account of care and services furnished to individuals;

(25) provide (A) that the State or local agency administering such plan will take all reasonable measures to ascertain the legal liability of third parties to pay for care and services (available under the plan) arising out of injury, disease, or disability, (B) that where the State or local agency knows that a third party has such a legal liability such agency will treat such legal liability as a resource of the individual on whose behalf the care and services are made available for purposes of paragraph (17)(B), and (C) that in any case where such a legal liability is found to exist after medical assistance has been made available on behalf of the individual and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery[2], the State or local agency will seek reimbursement for such assistance to the extent of such legal liability;

(26) effective July 1, 1969, provide (A) for a regular program of medical review (including medical evaluation) of each patient's need for skilled nursing facility care or (in the case of individuals who are eligible therefor under the State plan) need for care in a mental hospital, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing facility; (B) for periodic inspections to be made in all skilled nursing facilities and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel, or, in the case of skilled nursing facilities, composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such nursing facilities (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing facilities (or institutions) to meet the current health needs and promote

[1] P.L. 97-35, §2175(a)(2), struck out "and a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or paragraph (1) or (10) solely by reason of the fact that the State (or any political subdivision thereof) has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic;", effective August 13, 1981.

[2] P.L. 97-35, §2182, inserted "and where the amount of reimbursement the State can reasonably expect to recover exceeds the costs of such recovery", effective August 13, 1981.

the maximum physical well-being of patients receiving care in such homes[1] (or institutions), (iii) the necessity and desirability of the continued placement of such patients in such nursing facilities (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

(28) provide that any skilled nursing facility receiving payments under such plan must satisfy all of the requirements contained in section 1861(j), except that the exclusion contained therein with respect to institutions which are primarily for the care and treatment of mental diseases and tuberculosis shall not apply for purposes of this title;

(29) include a State program which meets the requirements set forth in section 1908, for the licensing of administrators of nursing homes;

(30) provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan (including but not limited to utilization review plans as provided for in section 1903(i)(4)) as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are[2] consistent with efficiency, economy, and quality of care;

(31) provide (A) for a regular program of independent professional review (including medical evaluation of each patient's need for intermediate care) and a written plan of service prior to admission or authorization of benefits in an intermediate care facility as determined under regulations of the Secretary; (B) for periodic on-site inspections to be made in all such intermediate care facilities (if the State plan includes care in such institutions) within the State by one or more independent professional review teams (composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such intermediate care facilities to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular intermediate care facilities to meet the current health needs and promote the maximum

[1] As in original.

[2] P.L. 97-35, §2174(a), struck out "(including payments for any drugs provided under the plan) are not in excess of reasonable charges" and substituted "are", effective with respect to services furnished on or after October 1, 1981.

physical well-being of patients receiving care in such facilities, (iii) the necessity and desirability of the continued placement of such patients in such facilities, and (iv) the feasibility of meeting their health care needs through alternative institutional or non-institutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections, together with any recommendations to the State agency administering or supervising the administration of the State plan;

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service; and

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

(33) provide—

(A) that the State health agency, or other appropriate State medical agency, shall be responsible for establishing a plan, consistent with regulations prescribed by the Secretary, for the review by appropriate professional health personnel of the appropriateness and quality of care and services furnished to recipients of medical assistance under the plan in order to provide guidance with respect thereto in the administration of the plan to the State agency established or designated pursuant to paragraph (5) and, where applicable, to the State agency described in the penultimate sentence of this subsection; and

(B) that the State or local agency utilized by the Secretary for the purpose specified in the first sentence of section 1864(a), or, if such agency is not the State agency which is responsible for licensing health institutions, the State agency responsible for such licensing, will perform for the State agency administering or supervising the administration of the plan approved under this title the function of determining whether institutions and agencies meet the requirements for participation in the program under such plan, except that, if the Secretary has cause to question the adequacy of such determinations, the Secretary is authorized to validate State determinations and, on that basis, make independent and binding determinations concerning the extent to which individual institutions and agencies meet the requirements for participation;

(34) provide that in the case of any individual who has been determined to be eligible for medical assistance under the plan, such assistance will be made available to him for care and services included under the plan and furnished in or after the third month before the month in which he made application (or application was made on his behalf in the case of a deceased individual) for such assistance if such individual was (or upon application would have been) eligible for such assistance at the time such care and services were furnished;

(35) provide that any disclosing entity (as defined in section 1124(a)(2)) receiving payments under such plan complies with the requirements of section 1124;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this title, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor;[1]

(39) provide that the State agency shall bar any specified person[2] from participation in the program under the State plan for the period specified by the Secretary, when required by him to do so pursuant to section 1128, and provide that no payment may be made under the plan with respect to any item or service furnished by such person[3] during such period;

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1121(a) to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization;

(41) provide that whenever a provider of services or any other person is terminated, suspended, or otherwise sanctioned or prohibited from participating under the State plan, the State agency shall promptly notify the Secretary of such action;

(42) provide (A) that the records of any entity participating in the plan and providing services reimbursable on a cost-related basis will be audited as the Secretary determines to be necessary to insure that proper payments are made under the plan, (B) that such audits, for such entities also providing services under title XVIII, will be coordinated and conducted jointly (to such extent and in such manner as the Secretary shall prescribe) with audits conducted for purposes of such part[4], and (C) for payment of such proportion of costs of each such common audit as is determined under methods specified by the Secretary under section 1129(a);[5]

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[1]See P.L. 78-410, "Public Health Service Act", §1318, with respect to disclosure of financial information required to be supplied under this paragraph.

[2]P.L. 97-35, §2105(c), struck out "individual" and substituted "person", effective August 13, 1981.

[3]P.L. 97-35, §2105(c), struck out "individual" and substituted "person", effective August 13, 1981.

[4]As in original. Should specify reference intended.

[5]P.L. 96-499, §914(b)(1)(C), added paragraph (42).

P.L. 97-248, §137(c)(1), effective as if it had been originally included in P.L. 96-499, made paragrapn (42) effective with respect to cost reporting periods, beginning on or after April 1, 1981, of an entity providing services under a State plan approved under Title XIX of the Act, unless the Secretary determines that State legislation is required; in the latter case, see P.L. 96-499, "Omnibus Reconciliation Act of 1980", §914(b)(2)(B).

(43) if the State plan makes provision for payment to a physician for laboratory services the performance of which such physician (or any other physician with whom he shares his practice) did not personally perform or supervise, include provision to insure that payment under the State plan for such laboratory services not exceed the payment authorized for such services by section 1842(h); and

(44) provide for—

(A) informing all persons in the State who are under the age of 21 and who have been determined to be eligible for medical assistance including services described in section 1905(a)(4)(B), of the availability of early and periodic screening, diagnostic, and treatment services as described in section 1905(a)(4)(B),

(B) providing or arranging for the provision of such screening services in all cases where they are requested, and

(C) arranging for (directly or through referral to appropriate agencies, organizations, or individuals) corrective treatment the need for which is disclosed by such child health screening services.[1]

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this title, the State agency which administered or supervised the administration of the plan of such State approved under title X (or title XVI, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under title I (or title XVI, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under title X (or title XVI, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this title (except for purposes of paragraph (10)). For purposes of paragraphs (9)(A), (26)[2], (29), (31), and (33), and of section 1903(i)(4), the terms "skilled nursing facility" and "nursing home" do not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under title I, X, XIV, or XVI, or part A of title IV and who for such month was entitled to monthly insurance benefits under title II shall for purposes of this title only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under title II resulting from enactment of Public Law 92-

[1]P.L. 97-35, §2181(a)(2)(C), added paragraph (44). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2181(b), p. 783.

[2]P.L. 97-248, §137(e), inserted ", (26)", effective September 3, 1982.

336[1] not been applicable to such individual.

The requirement of clause[2] (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan—

(1) an age requirement of more than 65 years; or

(2)[3] any residence requirement which excludes any individual who resides in the State; or

(3)[4] any citizenship requirement which excludes any citizen of the United States.

(c) Notwithstanding subsection (b), the Secretary shall not approve any State plan for medical assistance if he determines that the approval and operation of the plan will result in a reduction in aid or assistance in the form of money payments (other than so much, if any, of the aid or assistance in such form as was, immediately prior to the effective date of the State plan under this title, attributable to medical needs) provided for eligible individuals under a plan of such State approved under title I, X, XIV, or XVI, or part A of title IV.

(d) If a State contracts with a utilization and quality control peer review organization having a contract with the Secretary[5] under part B of title XI for the performance of medical or utilization review functions required under this title of a State plan with respect to specific services or providers (or services or providers in a geographic area of the State), such requirements shall be deemed to be met for those services or providers (or services or providers in that area) by delegation to such organization (or organizations)[6] under the contract of the State's authority to conduct such review activities if the contract provides for the performance of activities not inconsistent with part B of title XI and provides for such assurances of satisfactory performance by such organization (or organizations)[7] as the Secretary may prescribe.[8]

(e)(1)[9] Notwithstanding any other provision of this title, effective

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[1]P.L. 92-336 provided monthly benefit rate increases for (1) old-age, survivors, and disability insurance beneficiaries, and (2) individuals age 72 or over receiving payments under §228 of the Social Security Act.

[2]As in original. Possibly should be "subparagraph".

[3]P.L. 97-35, §2172(a), amended paragraph (2), effective August 13, 1981.

P.L. 97-248, §137(b)(10), struck out the former paragraph (2) and redesignated paragraph (3) as paragraph (2), effective as if it had been originally included in P.L. 97-35.

[4]P.L. 97-248, §137(b)(10), redesignated paragraph (4) as paragraph (3), effective as if it had been originally included in P.L. 97-35.

[5]P.L. 97-248, §146(a)(1), struck out "Professional Standards Review Organization designated, conditionally or otherwise," and substituted "utilization and quality control peer review organization having a contract with the Secretary", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, p. 792.

[6]P.L. 97-248, §146(a)(2), struck out "Organization (or Organizations)" and substituted "organization (or organizations)", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982. See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, p. 792.

[7]P.L. 97-248, §146(a)(2), struck out "Organization (or Organizations)" and substituted "organization (or organizations)", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, p. 792.

[8]P.L. 97-35, §2113(m), added subsection (d), effective with respect to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.

[9]P.L. 97-35, §2178(b), inserted "(1)". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

January 1, 1974, each State plan approved under this title must provide that each family which was receiving aid pursuant to a plan of the State approved under part A of title IV in at least 3 of the 6 months immediately preceding the month in which such family became ineligible for such aid because of increased hours of, or increased income from, employment, shall, while a member of such family is employed, remain eligible for assistance under the plan approved under this title (as though the family was receiving aid under the plan approved under part A of title IV) for 4 calendar months beginning with the month in which such family became ineligible for aid under the plan approved under part A of title IV because of income and resources or hours of work limitations contained in such plan.

(2)(A) In the case of an individual who is enrolled with a qualified health maintenance organization (as defined in title XIII of the Public Health Service Act[1]) under a contract described in section 1903(m)(2)(A) and who would (but for this paragraph) lose eligibility for benefits under this title before the end of the minimum enrollment period (defined in subparagraph (B)), the State plan may provide, notwithstanding any other provision of this title, that the individual shall be deemed to continue to be eligible for such benefits until the end of such minimum period, but only with respect to such benefits provided to the individual as an enrollee of such organization.

(B) For purposes of subparagraph (A), the term "minimum enrollment period" means, with respect to an individual's enrollment with a health maintenance organization under a State plan, a period, established by the State, of not more than six months beginning on the date the individual's enrollment with the organization becomes effective.[2]

(3) At the option of the State, any individual who—

(A) is 18 years of age or younger and qualifies as a disabled individual under section 1614(a);

(B) with respect to whom there has been a determination by the State that—

(i) the individual requires a level of care provided in a hospital, skilled nursing facility, or intermediate care facility,

(ii) it is appropriate to provide such care for the individual outside such an institution, and

(iii) the estimated amount which would be expended for medical assistance for the individual for such care outside an institution is not greater than the estimated amount which would otherwise be expended for medical assistance for the individual within an appropriate institution; and

(C) if the individual were in a medical institution, would be eligible to have a supplemental security income (or State supplemental) payment made with respect to him under title XVI,

shall be deemed, for purposes of this title only, to be an individual with respect to whom a supplemental security income payment, or

[1] P.L. 78-410.

[2] P.L. 97-35, §2178(b), added paragraph (2). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

State supplemental payment, respectively, is being paid under title XVI.[1]

(f) Notwithstanding any other provision of this title, except as provided in subsection (e), no State not eligible to participate in the State plan program established under title XVI shall be required to provide medical assistance to any aged, blind, or disabled individual (within the meaning of title XVI) for any month unless such State would be (or would have been) required to provide medical assistance to such individual for such month had its plan for medical assistance approved under this title and in effect on January 1, 1972, been in effect in such month, except that for this purpose any such individual shall be deemed eligible for medical assistance under such State plan if (in addition to meeting such other requirements as are or may be imposed under the State plan) the income of any such individual as determined in accordance with section 1903(*f*) (after deducting any supplemental security income payment and State supplementary payment made with respect to such individual, and incurred expenses for medical care as recognized under State law) is not in excess of the standard for medical assistance established under the State plan as in effect on January 1, 1972. In States which provide medical assistance to individuals pursuant to clause[2] (10)(C) of subsection (a) of this section, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under clause (10)(A) of that subsection if that individual is, or is eligible to be (1) an individual with respect to whom there is payable a State supplementary payment on the basis of which similarly situated individuals are eligible to receive medical assistance equal in amount, duration, and scope to that provided to individuals eligible under clause (10)(A), or (2) an eligible individual or eligible spouse, as defined in title XVI, with respect to whom supplemental security income benefits are payable; otherwise that individual shall be considered to be an individual eligible for medical assistance under clause (10)(C) of that subsection. In States which do not provide medical assistance to individuals pursuant to clause (10)(C) of that subsection, an individual who is eligible for medical assistance by reason of the requirements of this section concerning the deduction of incurred medical expenses from income shall be considered an individual eligible for medical assistance under clause (10)(A) of that subsection.

[(g) Repealed.[3]]

[(h) Repealed.[4]]

(i)(1) In addition to any other authority under State law, where a State determines that a skilled nursing facility or intermediate care facility which is certified for participation under its plan no longer substantially meets the provisions of section 1861(j) or section 1905(c), respectively, and further determines that the facility's deficiencies—

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[1] P.L. 97-248, §134(a), added paragraph (3), effective October 1, 1982.

[2] As in original. Possibly should be "paragraph".

[3] P.L. 96-499, §913(d); 94 Stat. 2620.

[4] P.L. 97-35, §2173(b)(1), repealed subsection (h). This repeal shall not apply with respect to services furnished before the date the Secretary first promulgates and has in effect final regulations (on an interim or other basis) to carry out §1902(a)(13)(A) of the Act (as amended by Subtitle C of P.L. 97-35 [§§2161-2184]).

(A) immediately jeopardize the health and safety of its patients, the State shall provide for the termination of the facility's certification for participation under the plan and may provide, or

(B) do not immediately jeopardize the health and safety of its patients, the State may, in lieu of providing for terminating the facility's certification for participation under the plan, provide

that no payment will be made under the State plan with respect to any individual admitted to such facility after a date specified by the State.

(2) The State shall not make such a decision with respect to a facility until the facility has had a reasonable opportunity, following the initial determination that it no longer substantially meets the provisions of section 1861(j) or section 1905(c) (as the case may be), to correct its deficiencies, and, following this period, has been given reasonable notice and opportunity for a hearing.

(3) The State's decision to deny payment may be made effective only after such notice to the public and to the facility as may be provided for by the State, and its effectiveness shall terminate (A) when the State finds that the facility is in substantial compliance (or is making good faith efforts to achieve substantial compliance) with the provisions of section 1861(j) or section 1905(c) (as the case may be), or (B) in the case described in paragraph (1)(B), with the end of the eleventh month following the month such decision is made effective, whichever occurs first. If a facility to which clause[1] (B) of the previous sentence applies still fails to substantially meet the provisions of the respective section on the date specified in such clause, the State shall terminate such facility's certification for participation under the plan effective with the first day of the first month following the month specified in such clause.

(j) Notwithstanding any other requirement of this title, the Secretary may waive or modify any requirement of this title with respect to the medical assistance program in American Samoa, other than a waiver of the Federal medical assistance percentage, the limitation in section 1108(c), or the requirement that payment may be made for medical assistance only with respect to amounts expended by American Samoa for care and services described in paragraphs (1) through (18) of section 1905(a).[2]

PAYMENT TO STATES[3]

SEC. 1903. [42 U.S.C. 1396b] (a) From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this title, for each quarter, beginning with the quarter commencing January 1, 1966—

(1) an amount equal to the Federal medical assistance percentage (as defined in section 1905(b), subject to subsections (g), (h), and (j) of this section) of the total amount expended during such

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[1] As in original. Possibly should be "subparagraph".

[2] P.L. 97-248, §132(c), struck out the former subsection (j), effective September 3, 1982, but the provisions of §1917(c)(2)(B) of the Act shall not apply with respect to a transfer of assets which took place prior to September 3, 1982.

P.L. 97-248, §136(d), added this subsection (j), effective October 1, 1982.

[3] See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §133(c), with respect to limiting Federal financial participation.

quarter as medical assistance under the State plan (including expenditures for premiums under part B of title XVIII, for individuals who are eligible for medical assistance under the plan and (A) are receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or (B) with respect to whom there is being paid a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), and, except in the case of individuals sixty-five years of age or older and disabled individuals entitled to hospital insurance benefits under title XVIII who are not enrolled under part B of title XVIII, other insurance premiums for medical or any other type of remedial care or the cost thereof); plus

(2) an amount equal to 75 per centum of so much of the sums expended during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to compensation or training of skilled professional medical personnel, and staff directly supporting such personnel, of the State agency or any other public agency; plus

(3) an amount equal to—

(A)(i) 90 per centum of so much of the sums expended during such quarter as are attributable to the design, development, or installation of such mechanized claims processing and information retrieval systems as the Secretary determines are likely to provide more efficient, economical, and effective administration of the plan and to be compatible with the claims processing and information retrieval systems utilized in the administration of title XVIII, including the State's share of the cost of installing such a system to be used jointly in the administration of such State's plan and the plan of any other State approved under this title, and

(ii) 90 per centum of so much of the sums expended during any such quarter in the fiscal year ending June 30, 1972, or the fiscal year ending June 30, 1973, as are attributable to the design, development, or installation of cost determination systems for State-owned general hospitals (except that the total amount paid to all States under this clause for either such fiscal year shall not exceed $150,000), and

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than

confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; and[1]

(C) 75 per centum of the sums expended with respect to costs incurred during such quarter (as found necessary by the Secretary for the proper and efficient administration of the State plan) as are attributable to the performance of medical and utilization review by a utilization and quality control peer review organization[2] under a contract entered into under section 1902(d); plus[3]

[(4) Expired.[4]]

(5) an amount equal to 90 per centum of the sums expended during such quarter which are attributable to the offering, arranging, and furnishing (directly or on a contract basis) of family planning services and supplies;

(6) subject to subsection (b)(3), an amount equal to—

(A) 90 per centum of the sums expended during such a quarter within the twelve-quarter period beginning with the first quarter in which a payment is made to the State pursuant to this paragraph, and

(B) 75 per centum of the sums expended during each succeeding calendar quarter,

with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q)); plus

(7) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b)(1) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter beginning after December 31, 1969, shall not take into account any amounts expended as medical assistance with respect to individuals aged 65 or over and disabled individuals entitled to hospital insurance benefits under title XVIII which would not have been so expended if the individuals involved had been enrolled in the insurance program established by part B of title XVIII, other than amounts expended under provisions of the plan of such State required by section 1902(a)(34).

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[1]P.L. 97-35, §2113(n)(1), struck out "plus" and substituted "and", effective with respect to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.

[2]P.L. 97-248, §146(b), struck out "Professional Standards Review Organization" and substituted "utilization and quality control peer review organization", effective, subject to §150, with respect to contracts entered into or renewed on or after September 3, 1982.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §150, p. 792.

[3]P.L. 97-35, §2113(n)(2), added subparagraph (C), effective with respect to agreements with Professional Standards Review Organizations entered into on or after October 1, 1981.

[4]P.L. 92-603, §249B, inserted paragraph (4) for the period of October 1, 1972, to June 30, 1974.

P.L. 93-368, §8, extended that period from June 30, 1974, to June 30, 1977.

P.L. 95-83, §309(b), extended that period from June 30, 1977, to September 30, 1980.

(2) For limitation on Federal participation for capital expenditures which are out of conformity with a comprehensive plan of a State or areawide planning agency, see section 1122.

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this title.

[(c) Stricken.[1]]

(d)(1) Prior to the beginning of each quarter, the Secretary shall estimate the amount to which a State will be entitled under subsections (a) and (b) for such quarter, such estimates to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsections, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, and (B) such other investigation as the Secretary may find necessary.

(2) The Secretary shall then pay to the State, in such installments as he may determine, the amounts so estimated, reduced or increased to the extent of any overpayment or underpayment which the Secretary determines was made under this section to such State for any prior quarter and with respect to which adjustment has not already been made under this subsection. Expenditures for which payments were made to the State under subsection (a) shall be treated as an overpayment to the extent that the State or local agency administering such plan has been reimbursed for such expenditures by a third party pursuant to the provisions of its plan in compliance with section 1902(a)(25).

(3) The pro rata share to which the United States is equitably entitled, as determined by the Secretary, of the net amount recovered during any quarter by the State or any political subdivision thereof with respect to medical assistance furnished under the State plan shall be considered an overpayment to be adjusted under this subsection.

(4) Upon the making of any estimate by the Secretary under this subsection, any appropriations available for payments under this section shall be deemed obligated.

(5) In any case in which the Secretary estimates that there has been an overpayment under this section to a State on the basis of a claim by such State that has been disallowed by the Secretary under section 1116(d), and such State disputes such disallowance, the amount of the Federal payment in controversy shall, at the option of the State, be retained by such State or recovered by the Secretary pending a final determination with respect to such payment amount. If such final determination is to the effect that any amount was properly disallowed, and the State chose to retain payment of the

[1] P.L. 93-233, §18(y)(1)(A); 87 Stat. 973.

amount in controversy, the Secretary shall offset, from any subsequent payments made to such State under this title, an amount equal to the proper amount of the disallowance plus interest on such amount disallowed for the period beginning on the date such amount was disallowed and ending on the date of such final determination[1] at a rate (determined by the Secretary) based on the average of the bond equivalent of the weekly 90-day treasury bill auction rates during such period.

(e) A State plan approved under this title may include, as a cost with respect to hospital services under the plan under this title, periodic expenditures made to reflect transitional allowances established with respect to a hospital closure or conversion under section 1884.[2]

(f)(1)(A) Except as provided in paragraph (4), payment under the preceding provisions of this section shall not be made with respect to any amount expended as medical assistance in a calendar quarter, in any State, for any member of a family the annual income of which exceeds the applicable income limitation determined under this paragraph.

(B)(i) Except as provided in clause (ii) of this subparagraph, the applicable income limitation with respect to any family is the amount determined, in accordance with standards prescribed by the Secretary, to be equivalent to 133⅓ percent of the highest amount which would ordinarily be paid to a family of the same size without any income or resources, in the form of money payments, under the plan of the State approved under part A of title IV of this Act.

(ii) If the Secretary finds that the operation of a uniform maximum limits payments to families of more than one size, he may adjust the amount otherwise determined under clause (i) to take account of families of different sizes.

(C) The total amount of any applicable income limitation determined under subparagraph (B) shall, if it is not a multiple of $100 or such other amount as the Secretary may prescribe, be rounded to the next higher multiple of $100 or such other amount, as the case may be.

(2) In computing a family's income for purposes of paragraph (1), there shall be excluded any costs (whether in the form of insurance premiums or otherwise) incurred by such family for medical care or for any other type of remedial care recognized under State law.

(3) For purposes of paragraph (1)(B), in the case of a family consisting of only one individual, the "highest amount which would ordinarily be paid" to such family under the State's plan approved under part A of title IV of this Act shall be the amount determined by the State agency (on the basis of reasonable relationship to the amounts payable under such plan to families consisting of two or more persons) to be the amount of the aid which would ordinarily be payable under such plan to a family (without any income or resources) consisting of one person if such plan[3] provided for aid to such a family.

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[1] P.L. 97-35, §2163, struck out "(but not to exceed a period of twelve months with respect to disallowances made prior to October 1, 1981, or six months with respect to disallowances made thereafter)", effective August 13, 1981.

[2] P.L. 97-35, §2101(a)(2), inserted subsection (e), effective only with respect to services furnished by a hospital during any accounting year beginning on or after October 1, 1981.

[3] P.L. 97-248, §137(g), struck out "(without regard to section 408)", effective October 1, 1982.

(4) The limitations on payment imposed by the preceding provisions of this subsection shall not apply with respect to any amount expended by a State as medical assistance for any individual—

(A) who is receiving aid or assistance under any plan of the State approved under title I, X, XIV or XVI, or part A of title IV, or with respect to whom supplemental security income benefits are being paid under title XVI, or

(B) who is not receiving such aid or assistance, and with respect to whom such benefits are not being paid, but (i) is eligible to receive such aid or assistance, or to have such benefits paid with respect to him, or (ii) would be eligible to receive such aid or assistance, or to have such benefits paid with respect to him if he were not in a medical institution, or

(C) with respect to whom there is being paid, or who is eligible, or would be eligible if he were not in a medical institution, to have paid with respect to him, a State supplementary payment and is eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A), but only if the income of such individual (as determined under section 1612, but without regard to subsection (b) thereof) does not exceed 300 percent of the supplemental security income benefit rate established by section 1611(b)(1),

at the time of the provision of the medical assistance giving rise to such expenditure.

(g)(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1876 or which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act[1])[2]), the Federal medical assistance percentage shall be decreased as follows: After an individual has received care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on 90 days (whether or not such days are consecutive), during any fiscal year, which for purposes of this section means the four calendar quarters ending with June 30, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—

[1] P.L. 78-410.

[2] P.L. 97-248, §137(b)(11), inserted "or which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act)", effective as if it had been originally included by P.L. 97-35.

(A) in each case for which payment is made under the State plan, a physician certifies at the time of admission, or, if later, the time the individual applies for medical assistance under the State plan (and the physician, or a physician assistant or nurse practitioner under the supervision of a physician,[1] recertifies, where such services are furnished over a period of time, in such cases, at least every 60 days (or, in the case of services that are intermediate care facility services provided in an institution for the mentally retarded[2], every year)[3], and accompanied by such supporting material, appropriate to the case involved, as may be provided in regulations of the Secretary), that such services are or were required to be given on an inpatient basis because the individual needs or needed such services; and

(B) in each such case, such services were furnished under a plan established and periodically reviewed and evaluated by a physician;

(C) such State has in effect a continuous program of review of utilization pursuant to section 1902(a)(30) whereby each admission is reviewed or screened in accordance with criteria established by medical and other professional personnel who are not themselves directly responsible for the care of the patient involved, and who do not have a significant financial interest in any such institution and are not, except in the case of a hospital, employed by the institution providing the care involved; and the information developed from such review or screening, along with the data obtained from prior reviews of the necessity for admission and continued stay of patients by such professional personnel, shall be used as the basis for establishing the size and composition of the sample of admissions to be subject to review and evaluation by such personnel, and any such sample may be of any size up to 100 per centum of all admissions and must be of sufficient size to serve the purpose of (i) identifying the patterns of care being provided and the changes occurring over time in such patterns so that the need for modification may be ascertained, and (ii) subjecting admissions to early or more extensive review where information indicates that such consideration is warranted; and

(D) such State has an effective program of medical review of the care of patients in mental hospitals, skilled nursing facilities, and intermediate care facilities pursuant to section 1902(a)(26) and (31) whereby the professional management of each case is reviewed and evaluated at least annually by independent professional review teams.

In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to

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[1]P.L. 97-35, §2183(a)(1), inserted "the physician, or a physician assistant or nurse practitioner under the supervision of a physician,", effective with respect to payments made to States for calendar quarters beginning on or after October 1, 1981.

[2]P.L. 97-248, §137(b)(12), struck out "described in section 1905(d)" and substituted "provided in an institution for the mentally retarded", effective as if it had been originally included by P.L. 97-35.

[3]P.L. 97-35, §2183(a)(2), inserted "(or, in the case of services that are intermediate care facility services described in section 1905(d), every year)", effective with respect to payments made to States for calendar quarters beginning on or after October 1, 1981.

have payments made (in whole or in part) on his behalf under section 1812.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this title, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before January 1, 1978, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to any calendar quarter ending on or before December 31, 1978, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraph[1] (26) and (31) of section 1902(a), if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

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[1]As in original. Should be "paragraphs".

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due deligence[1] in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6) The Secretary shall submit to Congress, not later than sixty days after the end of such calendar quarter, a report on—

(A) his determination as to whether or not each showing, made under paragraph (1) by a State with respect to the calendar quarter, has been found to be satisfactory under such paragraph;

(B) his review (through onsite surveys and otherwise) under paragraph (2) of the validity of showings previously submitted by a State; and

(C) any reduction in the Federal medical assistance percentage he has imposed on a State because of its submittal under paragraph (1) of an unsatisfactory or invalid showing.

(h)(1) If the Secretary determines for any calendar quarter beginning after June 30, 1973, with respect to any State that there does not exist a reasonable cost differential between the statewide average cost of skilled nursing facility services and the statewide average cost of intermediate care facility services in such State, the Secretary may reduce the amount which would otherwise be considered as expenditures under the State plan by any amount which in his judgment is a reasonable equivalent of the difference between the amount of the expenditures by such State for intermediate care facility services and the amount that would have been expended by such State for such services if there had been a reasonable cost differential between the cost of skilled nursing facility services and the cost of intermediate care facility services.

(2) In determining whether any such cost differential in any State is reasonable the Secretary shall take into consideration the range of such cost differentials in all States.

(3) For the purposes of this subsection, the term "cost differential" for any State for any quarter means, as determined by the Secretary on the basis of the data for the most recent calendar quarter for which satisfactory data are available, the excess of—

(A) the average amount paid in such State (regardless of the source of payment) per inpatient day for skilled nursing facility services, over

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[1] As in original. Should be "diligence".

(B) the average amount paid in such State (regardless of the source of payment) per inpatient day for intermediate care facility services.

(4) For purposes of this subsection, the term "cost" shall mean amounts reimbursable by the State under a State plan approved under this title.

(i) Payment under the preceding provisions of this section shall not be made—

[(1) Stricken.[1]]

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under title XVIII with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1862(d)(1) or under clause[2] (D), (E), or (F) of section 1866(b)(2), or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1866(b)(2) or under section 1902(a)(38); or

(3) with respect to any amount expended for inpatient hospital services furnished under the plan to the extent that such amount exceeds the hospital's customary charges with respect to such services or (if such services are furnished under the plan by a public institution free of charge or at nominal charges to the public) exceeds an amount determined on the basis of those items (specified in regulations prescribed by the Secretary) included in the determination of such payment which the Secretary finds will provide fair compensation to such institution for such services; or

(4) with respect to any amount expended for care or services furnished under the plan by a hospital or skilled nursing facility unless such hospital or skilled nursing facility has in effect a utilization review plan which meets the requirements imposed by section 1861(k) for purposes of title XVIII; and if such hospital or skilled nursing facility has in effect such a utilization review plan for purposes of title XVIII, such plan shall serve as the plan required by this subsection (with the same standards and procedures and the same review committee or group) as a condition of payment under this title; the Secretary is authorized to waive the requirements of this paragraph if the State agency demonstrates to his satisfaction that it has in operation utilization review procedures which are superior in their effectiveness to the procedures required under section 1861(k); or

(5) with respect to any amount expended for any drug product for which payment may not be made under part B of title XVIII because of section 1862(c); or[3]

(6) with respect to any amount expended for inpatient hospital tests (other than in emergency situations) not specifically or-

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[1]P.L. 97-35, §2174(b), struck out paragraph (1), effective with respect to services furnished on or after October 1, 1981.

[2]As in original. Possibly should be "subparagraph".

[3]P.L. 97-35, §2103(b)(1), added paragraph (5), effective with respect to amounts expended on or after October 1, 1981.

See P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §115(b), with respect to use of funds for implementing or enforcing this paragraph.

dered by the attending physician or other responsible practitioner.[1]

(j) Notwithstanding the preceding provisions of this section, the amount determined under subsection (a)(1) for any State for any quarter shall be adjusted in accordance with section 1914.

(k) The Secretary is authorized to provide at the request of any State (and without cost to such State) such technical and actuarial assistance as may be necessary to assist such State to contract with any health maintenance organization which meets the requirements of subsection (m) of this section[2] for the purpose of providing medical care and services to individuals who are entitled to medical assistance under this title.

[(l) Repealed.[3]]

(m)(1)(A) The term "health maintenance organization" means a public or private organization, organized under the laws of any State, which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act[4]) or which—

(i) makes services it provides to individuals eligible for benefits under this title accessible to such individuals, within the area served by the organization, to the same extent as such services are made accessible to individuals (eligible for medical assistance under the State plan) not enrolled with the organization, and

(ii) has made adequate provision against the risk of insolvency, which provision is satisfactory to the State and which assures that individuals eligible for benefits under this title are in no case held liable for debts of the organization in case of the organization's insolvency.[5]

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a health maintenance organization within the meaning of subparagraph (A), shall be integrated with the administration of section 1312 (a) and (b) of the Public Health Service Act[6].

(2)(A) Except as provided in subparagraphs (B) and (C), no payment shall be made under this title to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity which is responsible for the provision of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1905(a) or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary (or the State as authorized by paragraph (3)) has determined that the entity is a health maintenance organization as defined in paragraph (1);

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[1]P.L. 97-35, §2164(a), added paragraph (6), effective with respect to tests occurring on or after October 1, 1981.

[2]P.L. 97-248, §137(b)(13), struck out "section 1876" and substituted "subsection (m) of this section", effective as if it had been originally included by P.L. 97-35.

[3]P.L. 94-552, §1; 90 Stat. 2540.

[4]P.L. 78-410.

[5]P.L. 97-35, §2178(a)(1), struck out "legal entity which provides health services to individuals enrolled in such organization and which—" and clauses (i), (ii) and (iii) and substituted "public or private organization, organized under the laws of any State, which is a qualified health maintenance organization (as defined in section 1310(d) of the Public Health Service Act) or which—" and all that follows through subparagraph (A). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[6]P.L. 78-410.

(ii) less than 75 percent of the membership of the entity which is enrolled on a prepaid basis[1] consists of individuals who (I) are insured for benefits under part B of title XVIII or for benefits under both parts A and B of such title, or (II) are eligible to receive benefits under this title;

(iii) such services are provided for the benefit of individuals eligible for benefits under this title in accordance with a contract between the State and the entity under which prepaid payments to the entity are made on an actuarially sound basis;[2]

(iv) such contract provides that the Secretary and the State (or any person or organization designated by either) shall have the right to audit and inspect any books and records of the entity (and of any subcontractor) that pertain (I) to the ability of the entity to bear the risk of potential financial losses, or[3] (II) to services performed or determinations of amounts payable under the contract;[4]

(v) such contract provides that in the entity's enrollment, reenrollment, or disenrollment of individuals who are eligible for benefits under this title and eligible to enroll, reenroll, or disenroll with the entity pursuant to the contract, the entity will not discriminate among such individuals on the basis of their health status or requirements for health care services;[5]

(vi) such contract (I) permits individuals who have elected under the plan to enroll with the entity for provision of such benefits to terminate such enrollment without cause as of the beginning of the first calendar month following a full calendar month after the request is made for such termination, and (II) provides for notification of each such individual, at the time of the individual's enrollment, of such right to terminate such enrollment; and[6]

(vii) such contract provides that, in the case of medically necessary services which were provided (I) to an individual enrolled with the entity under the contract and entitled to benefits with respect to such services under the State's plan and (II) other than through the organization because the services were immediately required due to an unforeseen[7] illness, injury, or condition, either the entity or the State provides for reimbursement with respect to those services.[8]

(B) Subparagraph (A) does not apply with respect to payments under this title to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

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[1]P.L. 97-35, §2178(a)(2)(B), struck out "one-half of the membership of the entity" and substituted "75 percent of the membership of the entity which is enrolled on a prepaid basis". For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[2]P.L. 97-35, §2178(a)(2)(D), added clause (iii). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[3]P.L. 97-248, §137(b)(14)(A), struck out "and" and substituted "or", effective as if it had been originally included by P.L. 97-35.

[4]P.L. 97-35, §2178(a)(2)(D), added clause (iv). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[5]P.L. 97-35, §2178(a)(2)(D), added clause (v). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[6]P.L. 97-35, §2178(a)(2)(D), added clause (vi). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

[7]P.L. 97-248, §137(b)(14)(B), struck out "unforseen" and substituted "unforeseen", effective as if it had been originally included by P.L. 97-35.

[8]P.L. 97-35, §2178(a)(2)(D), added clause (vii). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 329(d)(1)(A) or 330(d)(1) of the Public Health Service Act[1], and (II)[2] for the period beginning July 1, 1976, and ending on the expiration of the peroid[3] for which payments are to be made under this title has been the recipient of a grant under either such section; and

(II) provides to its enrollees, on a prepaid capitation risk basis or on any other risk basis, all of the services and benefits described in paragraphs (1), (2), (3), (4)(C), and (5) of section 1905(a) and, to the extent required by section 1902(a)(13)(A)(ii) to be provided under a State plan for medical assistance, the services and benefits described in paragraph (7) of such section[4]; or

(ii) is a nonprofit primary health care entity located in a rural area (as defined by the Appalachian Regional Commission)—

(I) which received in the fiscal year ending June 30, 1976, at least $100,000 (by grant, subgrant, or subcontract) under the Appalachian Regional Development Act of 1965[5], and

(II) for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this title either has been the recipient of a grant, subgrant, or subcontract under such Act or has provided services under a contract (initially entered into during a year in which the entity was the recipient of such a grant, subgrant, or subcontract) with a State agency under this title on a prepaid capitation risk basis or on any other risk basis; or

(iii) which has contracted with the single State agency for the provision of services (but not including inpatient hospital services) to persons eligible under this title on a prepaid risk basis prior to 1970.

(C) Subparagraph (A)(ii) shall not apply with respect to payments under this title to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on the date of enactment of this subsection[6] or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

(D) In the case of a health maintenance organization that is a public entity, the Secretary may modify or waive the requirement described in subparagraph (A)(ii) but only if the Secretary determines that (i) special circumstances warrant such modification or waiver, and (ii) the organization has taken and is taking reasonable efforts to enroll individuals who are not entitled to benefits under the State plan approved under this title or under title XVIII.[7]

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[1]P.L. 78-410.
[2]As in original; this subdivision designation "(II)" should be stricken.
[3]As in original. Should be "period".
[4]Reference is to section 1905(a).
[5]P.L. 89-4; see 40 U.S.C. App. 214, 303.
[6]October 8, 1976 (P.L. 94-460, 90 Stat. 1945, at 1959).
[7]P.L. 97-35, §2178(a)(3), added subparagraph (D). For the effective date, see P.L. 97-35, "Omnibus Budget Reconciliation Act of 1981", §2178(c), p. 783.

(3) A State may, in the case of an entity which has submitted an application to the Secretary for determination that it is a health maintenance organization within the meaning of paragraph (1) and for which no such determination has been made within 90 days of the submission of the application, make a provisional determination for the purposes of this title that such entity is such a health maintenance organization. Such provisional determination shall remain in force until such time as the Secretary makes a determination regarding the entity's qualification under paragraph (1).

(n) The State agency may refuse to enter into any contract or agreement with a hospital, nursing home, or other institution, organization, or agency for purposes of participation under the State plan, or otherwise to approve an institution, organization, or agency for such purposes, if any person, who has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency, or who is an officer, director, agent, or managing employee (as defined in section 1126(b)) of such institution, organization, or agency, is a person described in section 1126(a) (whether or not such institution, organization, or agency has in effect an agreement entered into with the Secretary pursuant to section 1866[1]); and, notwithstanding any other provision of this section, the State agency may terminate any such contract, agreement, or approval if it determines that the institution, organization, or agency did not fully and accurately make any disclosure required of it by section 1126(a) at the time such contract or agreement was entered into or such approval was given.

(o) Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this title to the extent that a private insurer (as defined by the Secretary by regulation) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p)(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1912, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) For the purposes of this section, the term "State medicaid fraud control unit" means a single identifiable entity of the State govern-

[1]P.L. 97-35, §2106(b)(3), struck out "of this section", effective August 13, 1981.

ment which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this title to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this title.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this title.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this title.

(4) The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this title, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan to health care facilities and that are discovered by the entity in carrying out its activities.

(6) The entity employs such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(r)(1)(A) In order to receive payments under paragraphs (2) and (7) of subsection (a) without being subject to per centum reductions set forth in subparagraph (C) of this paragraph, a State must provide that mechanized claims processing and information retrieval systems of the type described in subsection (a)(3)(B) and detailed in an advance planning document approved by the Secretary are operational on or before the deadline established under subparagraph (B).

(B) The deadline for operation of such systems for a State is the earlier of (i) September 30, 1982, or (ii) the last day of the sixth month following the date specified for operation of such systems in the State's most recently approved advance planning document submitted before the date of the enactment of this subsection[1].

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2) and (7) of subsection (a) with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning on or after such deadline, and shall be further reduced by an additional 5 percentage points after each period consisting of two quarters during which the Secretary determines the State fails to meet the requirements of subparagraph (A); except that—

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph; and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State meets the requirements of subparagraph (A).

(2)(A) In order to receive payments under paragraphs (2) and (7) of subsection (a) without being subject to the per centum reductions set forth in subparagraph (C) of this paragraph, a State must have its mechanized claims processing and information retrieval systems, of the type required to be operational under paragraph (1), initially approved by the Secretary in accordance with paragraph (5)(A) on or before the deadline established under subparagraph (B).

(B) The deadline for approval of such systems for a State is the last day of the fourth quarter that begins after the date on which the Secretary determines that such systems became operational as required under paragraph (1).

(C) If a State fails to meet the deadline established under subparagraph (B), the per centums specified in paragraphs (2) and (7) of subsection (a) with respect to that State shall each be reduced by 5 percentage points for the first two quarters beginning after such deadline, and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters during which the State fails to meet the requirements of subparagraph (A); except that—

(i) neither such per centum may be reduced by more than 25 percentage points by reason of this paragraph, and

(ii) no reduction shall be made under this paragraph for any quarter following the quarter during which such State's systems are approved by the Secretary as provided in subparagraph (A).

(D) Any State's systems which are approved by the Secretary for purposes of subsection (a)(3)(B) on or before the date of the enactment of this subsection[2] shall be deemed to be initially approved for purposes of this subsection.

(3)(A) When a State's systems are initially approved, the 75 per centum Federal matching provided in subsection (a)(3)(B) shall become effective with respect to such systems, retroactive to the first quarter beginning after the date on which such systems became operational as required under paragraph (1), except as provided in subparagraph (B).

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[1]October 7, 1980 [P.L. 96-398; 94 Stat. 1564, 1609].
[2]October 7, 1980 [P.L. 96-398; 94 Stat. 1564, 1610].

(B) In the case of any State which was subject to a per centum reduction under paragraph (2), the per centum specified in subsection (a)(3)(B) shall be reduced by 5 percentage points for the first two quarters beginning after the deadline established under paragraph (2)(B), and shall be further reduced by an additional 5 percentage points at the end of each period consisting of two quarters beginning after such deadline and before the date on which such systems are initially approved, except that no reduction shall be made under this paragraph for any quarter following the quarter during which the State's systems are initially approved by the Secretary.

(4)(A) The Secretary shall review all approved systems not less often than once each fiscal year, and shall reapprove or disapprove any such systems. Systems which fail to meet the current performance standards, system requirements, and any other conditions for approval developed by the Secretary under paragraph (6) shall be disapproved. Any State having systems which are so disapproved shall be subject to a per centum reduction under subparagraph (B). The Secretary shall make the determination of reapproval or disapproval and so notify the States not later than the end of the first quarter following the review period.

(B) If the Secretary disapproves a State's systems under subparagraph (A), the Secretary shall, with respect to such State for quarters beginning after the determination of disapproval and before the first quarter beginning after such systems are reapproved, reduce the per centum specified in subsection (a)(3)(B) to a per centum of not less than 50 per centum and not more than 70 per centum as the Secretary determines to be appropriate and commensurate with the nature of noncompliance by such State; except that such per centum may not be reduced by more than 10 percentage points in any 4-quarter period by reason of this subparagraph. No State shall be subject to a per centum reduction under this paragraph (i) before the fifth quarter beginning after such State's systems were initially approved, or (ii) on the basis of a review conducted before October 1, 1981.

(C) The Secretary may retroactively waive a per centum reduction imposed under subparagraph (B), if the Secretary determines that the State's systems meet all current performance standards and other requirements for reapproval and that such action would improve the administration of the State's plan under this title, except that no such waiver may extend beyond the four quarters immediately prior to the quarter in which the State's systems are reapproved.

(5)(A) In order to be initially approved by the Secretary, mechanized claims processing and information retrieval systems must be of the type described in subsection (a)(3)(B) and must meet the following requirements:

(i) The systems must be capable of developing provider, physician, and patient profiles which are sufficient to provide specific information as to the use of covered types of services and items, including prescribed drugs.

(ii) The State must provide that information on probable fraud or abuse which is obtained from, or developed by, the systems, is made available to the State's medicaid fraud control unit (if any) certified under subsection (q) of this section.

(iii) The systems must meet all performance standards and other requirements for initial approval developed by the Secretary under paragraph (6).

(B) In order to be reapproved by the Secretary, mechanized claims processing and information retrieval systems must meet the requirements of subparagraphs (A)(i) and (A)(ii) and performance standards and other requirements for reapproval developed by the Secretary under paragraph (6).

(6) The Secretary, with respect to State systems, shall—

(A) develop performance standards, system requirements, and other conditions for approval for use in initially approving such State systems, and shall further develop written approval procedures for conducting reviews for initial approval, including specific criteria for assessing systems in operation to insure that all such performance standards and other requirements are met;

(B) by not later than October 1, 1980, develop an initial set of performance standards, system requirements, and other conditions for reapproval for use in reapproving or disapproving State systems, and shall further develop written reapproval procedures for conducting reviews for reapproval, including specific criteria for reassessing systems operations over a period of at least six months during each fiscal year to insure that all such performance standards and other requirements are met on a continuous basis;

(C) provide that reviews for reapproval, conducted before October 1, 1981, shall be for the purpose of developing a systems performance data base and assisting States to improve their systems, and that no per centum reduction shall be made under paragraph (4) on the basis of such a review;

(D) insure that review procedures, performance standards, and other requirements developed under subparagraph (B) are sufficiently flexible to allow for differing administrative needs among the States, and that such procedures, standards, and requirements are of a nature which will permit their use by the States for self-evaluation;

(E) notify all States of proposed procedures, standards, and other requirements at least one quarter prior to the fiscal year in which such procedures, standards, and other requirements will be used for conducting reviews for reapproval;

(F) periodically update the systems performance standards, system requirements, review criteria, objectives, regulations, and guides as the Secretary shall from time to time deem appropriate;

(G) provide technical assistance to States in the development and improvement of the systems so as to continually improve the capacity of such systems to effectively detect cases of fraud or abuse;

(H) for the purpose of insuring compatibility between the State systems and the systems utilized in the administration of title XVIII—

(i) develop a uniform identification coding system (to the extent feasible) for providers, other persons receiving payments under the State plans (approved under this title) or under title XVIII, and beneficiaries of medical services under such plans or title;

(ii) provide liaison between States and carriers and intermediaries having agreements under title XVIII to facilitate timely exchange of appropriate data; and

(iii) improve the exchange of data between the States and the Secretary with respect to providers and other persons who have been terminated, suspended, or otherwise sanctioned under a State plan (approved under this title) or under title XVIII;

(I) develop and disseminate clear definitions of those types of reasonable costs relating to State systems which are reimbursable under the provisions of subsection (a)(3) of this section; and

(J) report on or before October 1, 1981, to the Congress on the extent to which States have developed and operated effective mechanized claims processing and information retrieval systems.

(7)(A) The Secretary shall waive the provisions of this subsection with respect to initial operation and approval of mechanized claims processing and information retrieval systems with respect to any State which—

(i) had a 1976 population (as reported by the Bureau of the Census) of less than 1,000,000 and which made total expenditures (including Federal reimbursement) for which Federal financial participation is authorized under this title of less than $100,000,000 in fiscal year 1976 (as reported by such State for such year), or

(ii) is a Commonwealth, or territory or possession, of the United States,

if such State reasonably demonstrates, and the Secretary does not formally disagree, that the application of such provisions would not significantly improve the efficiency of the administration of such State's plan under this title.

(B) If the Secretary determines that the application of the provisions described in subparagraph (A) to a State would significantly improve the efficiency of the administration of the State's plan under this title, the Secretary may withdraw the State's waiver under subparagraph (A) and, in such case, the Secretary shall impose a timetable for such State with respect to compliance with the provisions of this subsection and the imposition of per centum reductions. Such timetable shall be comparable to the timetable established under this subsection as to the amount of time allowed such State to comply and the timing of per centum reductions.

(8)(A) The per centum reductions provided for under this subsection shall not apply to a State for any quarter with respect to which the Secretary determines that such State is unable to comply with the relevant requirements of this subsection—

(i) for good cause (but such a waiver may not be for a period in excess of 2 quarters), or

(ii) due to circumstances beyond the control of such State.

(B) If the Secretary determines under subparagraph (A) that such a reduction will not apply to a State, the Secretary shall report to the Congress on the basis for each such determination and on the modification of all time limitations and deadlines as described in subparagraph (C).

(C) For purposes of determining all time limitations and deadlines imposed under this subsection, any time period during which a State

was found under subparagraph (A)(ii) to be unable to comply with requirements of this subsection due to circumstances beyond its control shall not be taken into account, and the Secretary shall modify all such time limitations and deadlines with respect to such State accordingly.

(s)(1)(A) Notwithstanding any other provision of this section (except as otherwise provided in this subsection), the amount of payments which a State is otherwise entitled to receive under this title for any quarter in—

(i) fiscal year 1982, shall be reduced by 3 percent,

(ii) fiscal year 1983, shall be reduced by 4 percent, and

(iii) fiscal year 1984, shall be reduced by 4.5 percent,

of the amount to which the State is otherwise entitled (without regard to payments under subsections (a)(6) and (t), without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service, and[1] without regard to payments for claims relating to expenditures made before fiscal year 1982[2]).

(B) No reduction may be made under subparagraph (A) for a quarter unless, as of the first day of the quarter, the Secretary has promulgated and has in effect final regulations (on an interim or other basis) implementing paragraphs (10)(C) and (13)(A) of section 1902(a) (as amended by the Medicare and Medicaid Amendments of 1981[3]).

(C) For purposes of this paragraph, the term "State" only includes the fifty States and the District of Columbia and does not include any State which did not have a program in operation under[4] a plan approved under this title as of July 1, 1981.

(2) The percentage reduction imposed by paragraph (1) for a State for a quarter shall be reduced—

(A) by one percentage point if the State has a qualified hospital cost review program (described in paragraph (3)) for the quarter,

(B) by one percentage point if the State has a high unemployment rate (as determined under paragraph (4)) for the quarter, and

(C) by one percentage point if the total amount of the State's third party and fraud and abuse recoveries (as defined in paragraph (5)(A)) for the previous quarter is equal to or exceeds one percent of the amount of Federal payments that the Secretary estimates are due the State under this title for that previous quarter (without regard to payments under subsection (t)).

(3) For purposes of paragraph (2)(A), a State has a qualified hospital cost review program for a calendar quarter if such program meets the following requirements:

(A) The program must have been established by statute and in effect on July 1, 1981, and at the beginning of the quarter.

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[1]P.L. 97-248, §137(b)(15)(B), struck out "subsection (t) and" and substituted "subsections (a)(6) and (t), without regard to payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service, and", effective as if it had been originally included by P.L. 97-35.

[2]P.L. 97-248, §137(b)(15)(A), struck out "1981" and substituted "1982", effective as if it had originally been included by P.L. 97-35.

[3]P.L. 97-35, Title XXI, Subtitles A, B, and C.

[4]P.L. 97-248, §137(b)(15)(C), inserted "a program in operation under", effective as if it had originally been included by P.L. 97-35.

(B) The program must be operated directly by the State and must apply (i) to substantially all nonfederal[1] acute care hospitals (as defined by the Secretary) in the State and (ii) to review of either all revenues or expenses for inpatient hospital services (other than revenues under title XVIII of this Act, unless approved by the Secretary) or at least 75 percent of all revenues or expenses for inpatient hospital services (including revenues under title XVIII of this Act).

(C) The State must provide the Secretary with satisfactory assurances as to the equitable treatment under the program of all entities (including Federal and State programs) that pay hospitals for inpatient hospital services, of hospital employees, and of hospital patients.

(D) The Secretary must determine[2] that the annual rate of increase in aggregate hospital inpatient costs per capita or per admission (as defined by the Secretary) in the State during the most recent year (which shall consist of a 12-month period determined by the Secretary for this purpose)[3] ending at least nine months before such quarter (or, at the State's option, during the 2- or 3-year[4] period ending with that[5] year) is at least two percentage points less than the annual rate of increase during that[6] year (or that period, as the case may be) in such costs per capita or per admission for hospitals located in the United States (excluding from such computation, with respect to any[7] year in any period, any State which had in existence a qualified hospital cost review program (or, in the case of periods before January 1, 1982, had a hospital cost review program which the Secretary determines met for such periods the provisions of subparagraphs (A), (B), and (C) of this paragraph) during that entire[8] year).

(4)(A) For purposes of paragraph (2)(B), a State has a high unemployment rate with respect to a quarter if the average of the monthly unemployment rates (as determined by the Bureau of Labor Statistics) for the State for the three months immediately before such quarter is equal to or greater than 150 percent of the average of such rates for the United States for such months.

(B) For purposes of subparagraph (A) and paragraph (3)(D)[9], the term "United States" only includes the fifty States and the District of Columbia.

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[1] As in original. Possibly should be "non-Federal".

[2] P.L. 97-248, §137(b)(15)(D)(i), struck out "determines" and substituted "must determine", effective as if it had been originally included by P.L. 97-35.

[3] P.L. 97-248, §137(b)(15)(D)(ii), struck out "calendar year" and substituted "year (which shall consist of a 12-month period determined by the Secretary for this purpose)", effective as if it had been originally included by P.L. 97-35.

[4] P.L. 97-248, §137(b)(15)(D)(iii), struck out "2 or 3 calendar year" and substituted "2- or 3-year", effective as if it had been originally included by P.L. 97-35. Executed as if P.L. 97-248, §137(b)(15)(D)(iii) strikes out "2 or 3 calendar-year".

[5] P.L. 97-248, §137(b)(15)(D)(iv), struck out "calendar", effective as if it had been originally included by P.L. 97-35.

[6] P.L. 97-248, §137(b)(15)(D)(iv), struck out "calendar", effective as if it had been originally included by P.L. 97-35.

[7] P.L. 97-248, §137(b)(15)(D)(iv), struck out "calendar", effective as if it had been originally included by P.L. 97-35.

[8] P.L. 97-248, §137(b)(15)(D)(iv), struck out "calendar", effective as if it had been originally included by P.L. 97-35.

[9] P.L. 97-248, §137(b)(15)(E), inserted "and paragraph (3)(D)", effective as if it had been originally included by P.L. 97-35.

(5)(A) For purposes of paragraph (2)(C), the term "third party and fraud and abuse recoveries" means, for a State for a previous quarter—

(i) the total amount that State demonstrates to the Secretary that it has recovered or diverted (including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination or suspension)[1] in the quarter on the basis of (I) third-party payments (described in section 1902(a)(25)), (II) the operation of its State medicaid fraud control unit (defined in subsection (q)), and (III) other fraud or abuse control activities, plus

(ii) any amount carried forward from the previous quarter under subparagraph (B).

Subclause (I) of clause (i) shall only apply to quarters during fiscal year 1982.

(B) If the total amount of the State's third party and fraud and abuse recoveries (defined in subparagraph (A)) for a quarter (beginning on or after October 1, 1981) exceeds one percent of the amount of Federal payments that the Secretary estimates are due the State under this title for that quarter (without regard to subsection (t)), the amount of such excess shall be carried forward to the following quarter or quarters[2] for purposes of clause (ii) of subparagraph (A).[3]

(t)(1) The Secretary shall determine for each State (as defined in subsection (s)(1)(C)) for each of fiscal years 1982, 1983, and 1984, a target amount of Federal medicaid expenditures. Such target amount for a State for fiscal year—

(A) 1982, is equal to 109 percent of the estimate (based upon the last such estimate for such State received by the Secretary before April 1, 1981) of the Federal share of expenditures under this title (other than payments under subsection (a)(6), interest paid under subsection (d)(5), and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service[4], without taking into account reductions in payment under subsection (s) or additional payments under this subsection, and without regard to payments for claims relating to expenditures made prior to October 1, 1980) in fiscal year 1981 for such State;

(B) 1983, is equal to the target amount determined under subparagraph (A) for the State increased or decreased by a

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[1] P.L. 97-248, §137(b)(15)(F), inserted "(including amounts saved, to the extent such amounts can be documented to the satisfaction of the Secretary, by reason of the suspension or termination of a provider or other person for fraud or abuse, but only during the period of such suspension or termination or, if shorter, the 1-year period beginning on the date of such termination or suspension,", effective as if it had been originally included by P.L. 97-35.

[2] P.L. 97-248, §137(b)(27), inserted "or quarters", effective as if it had been originally included by P.L. 97-35.

[3] P.L. 97-35, §2161(a), added subsection (s), effective August 13, 1981.

P.L. 97-35, §2161(c)(1), [as amended by P.L. 97-248, §137(a)(2)], repealed subsection (s), effective for calendar quarters beginning on or after October 1, 1984.

See P.L. 97-92, [Appropriations—Fiscal Year 1982], §118, with respect to use of Federal funds for medicaid payments to the States for Indian Health Service facilities.

[4] P.L. 97-248, §137(b)(16)(A), struck out "interest paid under subsection (d)(5)" and substituted "payments under subsection (a)(6), interest paid under subsection (d)(5), and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service", effective as if it had been originally included as part of P.L. 97-35.

percentage equal to the percentage increase or decrease (as the case may be) in the index of the medical care expenditure category of the Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics[1] for the 12-month period ending on September 30, 1983[2]; and

(C) 1984, is equal to the target amount determined under subparagraph (A) for the State increased or decreased by a percentage equal to the percentage increase or decrease (as the case may be) in the index of the medical care expenditure category of the Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics[3] for the 24-month period ending on September 30, 1984[4].

(2) Notwithstanding any other provision of this section (except as otherwise provided in this subsection), the amount of payments which a State (with a State plan approved under this title) is otherwise entitled to receive for the first quarter of any fiscal year (beginning with fiscal year 1983 and ending with fiscal year 1985) shall be supplemented by an amount equal to the lesser of—

(A) the amount by which the Secretary determines or estimates (subject to appropriate subsequent adjustments) the Federal share of expenditures under this title (other than payments under subsection (a)(6), interest paid under subsection (d)(5), and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service[5], without taking into account reductions in payment under subsection (s) or payments under this subsection, without regard to payments for claims relating to expenditures made prior to October 1, 1980, and subject to paragraph (3) of this subsection) under the State's plan for the previous fiscal year was less than the target amount of Federal medicaid expenditures for that State for that fiscal year determined under paragraph (1), or

(B) the amount of the reductions imposed with respect to the State under subsection (s) for the quarters in the previous fiscal year.

(3) Only for the purposes of computing under this subsection the Federal share of expenditures for a State for fiscal years 1982, 1983, and 1984 (in the case of the payment which may be made for the first quarter of fiscal years 1983, 1984, and 1985, respectively), the Federal medical assistance percentage for fiscal years 1982, 1983, and 1984 shall be the lower of the Federal medical assistance percentage for

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[1]P.L. 97-248, §137(b)(16)(D), struck out "consumer price index for all urban consumers (published by the Bureau of Labor Statistics)" and substituted "Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics", effective as if it had been originally included as part of P.L. 97-35.

[2]P.L. 97-248, §137(b)(16)(B), struck out "between September 1982 and September 1983" and substituted "for the 12-month period ending on September 30, 1983", effective as if it had been originally included as part of P.L. 97-35.

[3]P.L. 97-248, §137(b)(16)(D), struck out "consumer price index for all urban consumers (published by the Bureau of Labor Statistics)" and substituted "Consumer Price Index for all urban consumers (U.S. city average) published by the Bureau of Labor Statistics", effective as if it had been originally included as part of P.L. 97-35.

[4]P.L. 97-248, §137(b)(16)(C), struck out "between September 1982 and September 1984" and substituted "for the 24-month period ending on September 30, 1984", effective as if it had been originally included as part of P.L. 97-35.

[5]P.L. 97-248, §137(b)(16)(A), struck out "interest paid under subsection (d)(5)" and substituted "payments under subsection (a)(6), interest paid under subsection (d)(5), and payments for claims relating to expenditures made for medical assistance for services received through a facility of the Indian Health Service", effective as if it had been originally included as part of P.L. 97-35.

the State in effect for fiscal year 1981, or the Federal medical assistance percentage for the State in effect for fiscal year 1982.[1] [2]

(u)(1)(A) Notwithstanding subsection (a)(1), if the ratio of a State's erroneous excess payments for medical assistance (as defined in subparagraph (D)) to its total expenditures for medical assistance under the State plan approved under this title exceeds 0.03, for the period consisting of the third and fourth quarters of fiscal year 1983, or for any full fiscal year thereafter, then the Secretary shall make no payment for such period or fiscal year with respect to so much of such erroneous excess payments as exceeds such allowable error rate of 0.03.

(B) The Secretary may waive, in certain limited cases, all or part of the reduction required under subparagraph (A) with respect to any State if such State is unable to reach the allowable error rate for a period or fiscal year despite a good faith effort by such State.

(C) In estimating the amount to be paid to a State under subsection (d), the Secretary shall take into consideration the limitation on Federal financial participation imposed by subparagraph (A) and shall reduce the estimate he makes under subsection (d)(1), for purposes of payment to the State under subsection (d)(3), in light of any expected erroneous excess payments for medical assistance (estimated in accordance with such criteria, including sampling procedures, as he may prescribe and subject to subsequent adjustment, if necessary, under subsection (d)(2)).

(D)(i) For purposes of this subsection, the term "erroneous excess payments for medical assistance" means the total of—

(I) payments under the State plan with respect to ineligible individuals and families, and

(II) overpayments on behalf of eligible individuals and families by reason of error in determining the amount of expenditures for medical care required of an individual or family as a condition of eligibility.

(ii) In determining the amount of erroneous excess payments for medical assistance to an ineligible individual or family under clause (i)(I), if such ineligibility is the result of an error in determining the amount of the resources of such individual or family, the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment with respect to such individual or family, or (II) the difference between the actual amount of such resources and the allowable resource level established under the State plan.

(iii) In determining the amount of erroneous excess payments for medical assistance to an individual or family under clause (i)(II), the amount of the erroneous excess payment shall be the smaller of (I) the amount of the payment on behalf of the individual or family, or (II) the difference between the actual amount incurred for medical

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[1] P.L. 97-248, §137(b)(16)(E), amended paragraph (3) in its entirety, effective as if it had been originally included as part of P.L. 97-35.

P.L. 97-448, §309(b)(16), amended paragraph (3) in its entirety, effective as if it had been originally included as part of P.L. 97-248.

[2] P.L. 97-35, §2161(b), [as amended by P.L. 97-248, §137(a)(1)], added subsection (t), effective August 13, 1981.

P.L. 97-35, §2161(c)(2), [as amended by P.L. 97-248, §137(a)(2)], repealed subsection (t), effective after payments for the first quarter of fiscal year 1985.

See P.L. 97-35, §2165, with respect to a study by the Comptroller General of the matching formula.

See P.L. 97-92, [Appropriations—Fiscal Year 1982], §118, with respect to use of Federal funds for medicaid payments to the States for Indian Health Service facilities.

care by the individual or family and the amount which should have been incurred in order to establish eligibility for medical assistance.

(E) For purposes of subparagraph (D), there shall be excluded, in determining both erroneous excess payments for medical assistance and total expenditures for medical assistance—

(i) payments with respect to any individual whose eligibility therefor was determined exclusively by the Secretary under an agreement pursuant to section 1634 and such other classes of individuals as the Secretary may by regulation prescribe whose eligibility was determined in part under such an agreement; and

(ii) payments made as the result of a technical error.

(2) The State agency administering the plan approved under this title shall, at such times and in such form as the Secretary may specify, provide information on the rates of erroneous excess payments made (or expected, with respect to future periods specified by the Secretary) in connection with its administration of such plan, together with any other data he requests that are reasonably necessary for him to carry out the provisions of this subsection.

(3)(A) If a State fails to cooperate with the Secretary in providing information necessary to carry out this subsection, the Secretary, directly or through contractual or such other arrangements as he may find appropriate, shall establish the error rates for that State on the basis of the best data reasonably available to him and in accordance with such techniques for sampling and estimating as he finds appropriate.

(B) In any case in which it is necessary for the Secretary to exercise his authority under subparagraph (A) to determine a State's error rates for a fiscal year, the amount that would otherwise be payable to such State under this title for quarters in such year shall be reduced by the costs incurred by the Secretary in making (directly or otherwise) such determination.

(4) This subsection shall not apply with respect to Puerto Rico, Guam, the Virgin Islands, the Northern Mariana Islands, or American Samoa.[1]

OPERATION OF STATE PLANS

SEC. 1904. [42 U.S.C. 1396c] If the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of the State plan approved under this title, finds—

(1) that the plan has been so changed that it no longer complies with the provisions of section 1902; or

(2) that in the administration of the plan there is a failure to comply substantially with any such provision;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure), until the Secretary is satisfied that there will no longer be any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

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[1] P.L. 97-248, §133(a), added subsection (u), effective September 3, 1982.

DEFINITIONS

SEC. 1905. [42 U.S.C. 1396d] For purposes of this title—

(a) The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1902(a)(10)(A)) not receiving aid or assistance under any plan of the State approved under title I, X, XIV, or XVI, or part A of title IV, and with respect to whom supplemental security income benefits are not being paid under title XVI, who are—

(i) under the age of 21, or, at the option of the State, under the age of 20, 19, or 18 as the State may choose,[1]

(ii) relatives specified in section 406(b)(1) with whom a child is living if such child[2] is (or would, if needy, be) a dependent child under part A of title IV,

(iii) 65 years of age or older,

(iv) blind, with respect to States eligible to participate in the State plan program established under title XVI,

(v) 18 years of age or older and permanently and totally disabled, with respect to States eligible to participate in the State plan program established under title XVI,

(vi) persons essential (as described in the second sentence of this subsection) to individuals receiving aid or assistance under State plans approved under title I, X, XIV, or XVI,

(vii) blind or disabled as defined in section 1614, with respect to States not eligible to participate in the State plan program established under title XVI, or

(viii) pregnant women,[3]

but whose income and resources are insufficient to meet all of such cost—

(1) inpatient hospital services (other than services in an institution for tuberculosis or mental diseases);

(2)(A) outpatient hospital services, and (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (l)) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (l)) and which are otherwise included in the plan;

(3) other laboratory and X-ray services;

(4)(A) skilled nursing facility services (other than services in an institution for tuberculosis or mental diseases) for individuals 21 years of age or older[4] (B) effective July 1, 1969, such early and

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[1] P.L. 97-248, §137(b)(17), struck out "or any reasonable category of such individuals,", effective as if it had been originally included in P.L. 97-35.
P.L. 97-35, §2172(b)(1), amended clause (i) in its entirety, effective August 13, 1981.

[2] P.L. 97-35, §2172(b)(2), struck out ", except for section 406(a)(2),", effective August 13, 1981.

[3] P.L. 97-248, §137(b)(18), added clause (viii), effective as if it had been originally included in P.L. 97-35.

[4] As in original. Punctuation omitted.

periodic screening and diagnosis of individuals who are eligible under the plan and are under the age of 21 to ascertain their physical or mental defects, and such health care, treatment, and other measures to correct or ameliorate defects and chronic conditions discovered thereby, as may be provided in regulations of the Secretary; and (C) family planning services and supplies furnished (directly or under arrangements with others) to individuals of child-bearing age (including minors who can be considered to be sexually active) who are eligible under the State plan and who desire such services and supplies;

(5) physicians' services furnished by a physician (as defined in section 1861(r)(1)), whether furnished in the office, the patient's home, a hospital, or a skilled nursing facility, or elsewhere;

(6) medical care, or any other type of remedial care recognized under State law, furnished by licensed practitioners within the scope of their practice as defined by State law;

(7) home health care services;

(8) private duty nursing services;

(9) clinic services;

(10) dental services;

(11) physical therapy and related services;

(12) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;

(13) other diagnostic, screening, preventive, and rehabilitative services;

(14) inpatient hospital services, skilled nursing facility services, and intermediate care facility services for individuals 65 years of age or over in an institution for tuberculosis or mental diseases;

(15) intermediate care facility services (other than such services in an institution for tuberculosis or mental diseases) for individuals who are determined, in accordance with section 1902(a)(31)(A), to be in need of such care;

(16) effective January 1, 1973, inpatient psychiatric hospital services for individuals under age 21, as defined in subsection (h);

(17) services furnished by a nurse-midwife (as defined in subsection (m)) which he[1] is legally authorized to perform under State law (or the State regulatory mechanism provided by State law), whether or not he[2] is under the supervision of, or associated with, a physician or other health care provider; and

(18) any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary;

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

For purposes of clauses[3] (vi) of the preceding sentence, a person shall

[1] As in original. Should be "he or she".
[2] As in original. Should be "he or she".
[3] As in original. Should be "clause".

be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under title I, X, XIV, or XVI), and such person is determined, under such a State plan, to be essential to the well being[1] of such individual.

(b) The term "Federal medical assistance percentage" for any State shall be 100 per centum less the State percentage; and the State percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such State bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum, and (2) the Federal medical assistance percentage for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands[2], and American Samoa[3] shall be 50 per centum. The Federal medical assistance percentage for any State shall be determined and promulgated in accordance with the provisions of subparagraph (B) of section 1101(a)(8). Notwithstanding the first sentence of this section, the Federal medical assistance percentage shall be 100 per centum with respect to amounts expended as medical assistance for services which are received through an Indian Health Service facility whether operated by the Indian Health Service or by an Indian tribe or tribal organization (as defined in section 4 of the Indian Health Care Improvement Act[4]). [5]

(c) For purposes of this title the term "intermediate care facility" means an institution which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, (3) meets such standards of safety and sanitation as are established under regulation of the Secretary in addition to those applicable to nursing homes[6] under State law; and (4) meets the requirements of section 1861(j)(14) with respect to protection of patients' personal funds. The term "intermediate care facility" also includes any skilled nursing facility or hospital which meets the requirements of the preceding sentence. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. The term "intermediate care facility" also includes any institution which is located in a State

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[1]As in original. Possibly should be "well-being".

[2]P.L. 97-35, §2162(a)(2), struck out "and Guam" and substituted "Guam, and the Northern Mariana Islands", effective August 13, 1981.

[3]P.L. 97-248, §136(c), struck out "and the Northern Mariana Islands" and substituted "the Northern Mariana Islands, and American Samoa", effective October 1, 1982.

[4]P.L. 94-437.

[5]See P.L. 97-35, §2165, with respect to a study by the Comptroller General of the matching formula.

[6]Questionable term in law. Should probably be "facilities".

on an Indian reservation and is certified by the Secretary as meeting the requirements of clauses (2), (3), and (4) of this subsection and providing the care and services required under clause (1). With respect to services furnished to individuals under age 65, the term "intermediate care facility" shall not include, except as provided in subsection (d), any public institution or distinct part thereof for mental diseases or mental defects.[1]

(d) The term "intermediate care facility services" may include services in a public institution (or distinct part thereof) for the mentally retarded or persons with related conditions if—

(1) the primary purpose of such institution (or distinct part thereof) is to provide health or rehabilitative services for mentally retarded individuals and which meet such standards as may be prescribed by the Secretary;

(2) the mentally retarded individual with respect to whom a request for payment is made under a plan approved under this title is receiving active treatment under such a program; and

(3) the State or political subdivision responsible for the operation of such institution has agreed that the non-Federal expenditures in any calendar quarter prior to January 1, 1975, with respect to services furnished to patients in such institution (or distinct part thereof) in the State will not, because of payments made under this title, be reduced below the average amount expended for such services in such institution in the four quarters immediately preceding the quarter in which the State in which such institution is located elected to make such services available under its plan approved under this title.

(e) In the case of any State the State plan of which (as approved under this title)—

(1) does not provide for the payment of services (other than services covered under section 1902(a)(12)) provided by an optometrist; but

(2) at a prior period did provide for the payment of services referred to in paragraph (1);

the term "physicians' services" (as used in subsection (a)(5)) shall include services of the type which an optometrist is legally authorized to perform where the State plan specifically provides that the term "physicians' services", as employed in such plan, includes services of the type which an optometrist is legally authorized to perform, and shall be reimbursed whether furnished by a physician or an optometrist.

(f) For purposes of this title, the term "skilled nursing facility services" means services which are or were required to be given an individual who needs or needed on a daily basis skilled nursing care (provided directly by or requiring the supervision of skilled nursing personnel) or other skilled rehabilitation services which as a practical matter can only be provided in a skilled nursing facility on an inpatient basis.

(g) If the State plan includes provision of chiropractors' services, such services include only—

(1) services provided by a chiropractor (A) who is licensed as such by the State and (B) who meets uniform minimum standards promulgated by the Secretary under section 1861(r)(5); and

[1]See P.L. 95-292, [Social Security—End Stage Renal Disease Program], §8(c), with respect to costs chargeable to patients' funds.

(2) services which consist of treatment by means of manual manipulation of the spine which the chiropractor is legally authorized to perform by the State.

(h)(1) For purposes of paragraph (16) of subsection (a), the term "inpatient psychiatric hospital services for individuals under age 21" includes only—

(A) inpatient services which are provided in an institution which is accredited as a psychiatric hospital by the Joint Commission on Accreditation of Hospitals;

(B) inpatient services which, in the case of any individual (i) involve active treatment which meets such standards as may be prescribed in regulations by the Secretary, and (ii) a team, consisting of physicians and other personnel qualified to make determinations with respect to mental health conditions and the treatment thereof, has determined are necessary on an inpatient basis and can reasonably be expected to improve the condition, by reason of which such services are necessary, to the extent that eventually such services will no longer be necessary; and

(C) inpatient services which, in the case of any individual, are provided prior to (i)[1] the date such individual attains age 21, or (ii)[2] in the case of an individual who was receiving such services in the period immediately preceding the date on which he attained age 21, (I)[3] the date such individual no longer requires such services, or (II)[4] if earlier, the date such individual attains age 22;

(2) Such term does not include services provided during any calendar quarter under the State plan of any State if the total amount of the funds expended, during such quarter, by the State (and the political subdivisions thereof) from non-Federal funds for inpatient services included under paragraph (1), and for active psychiatric care and treatment provided on an outpatient basis for eligible mentally ill children, is less than the average quarterly amount of the funds expended, during the 4-quarter period ending December 31, 1971, by the State (and the political subdivisions thereof) from non-Federal funds for such services.

(i) For purposes of this title, the term "skilled nursing facility" also includes any institution which is located in a State on an Indian reservation and is certified by the Secretary as being a qualified skilled nursing facility by meeting the requirements of section 1861(j).

(j) The term "State supplementary payment" means any cash payment made by a State on a regular basis to an individual who is receiving supplemental security income benefits under title XVI or who would but for his income be eligible to receive such benefits, as assistance based on need in supplementation of such benefits (as determined by the Secretary), but only to the extent that such payments are made with respect to an individual with respect to whom supplemental security income benefits are payable under title XVI, or would but for his income be payable under that title.

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[1] P.L. 97-248, §137(f), redesignated clause (A) as clause (i), effective September 3, 1982.
[2] P.L. 97-248, §137(f), redesignated clause (B) as clause (ii), effective September 3, 1982.
[3] P.L. 97-248, §137(f), redesignated clause (i) as subclause (I), effective September 3, 1982.
[4] P.L. 97-248, §137(f), redesignated clause (ii) as subclause (II), effective September 3, 1982.

(k) Increased supplemental security income benefits payable pursuant to section 211 of Public Law 93-66 shall not be considered supplemental security income benefits payable under title XVI.

(l) The terms "rural health clinic services" and "rural health clinic" have the meanings given such terms in section 1861(aa), except that (1) clause (ii) of section 1861(aa)(2) shall not apply to such terms, and (2) the physician arrangement required under section 1861(aa)(2)(B) shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(m) The term "nurse-midwife" means a registered nurse who has successfully completed a program of study and clinical experience meeting guidelines prescribed by the Secretary, or has been certified by an organization recognized by the Secretary, and performs services in the area of management of the care of mothers and babies (throughout the maternity cycle) which he[1] is legally authorized to perform in the State in which he[2] performs such services.

[SEC. 1906. Repealed.[3]]

OBSERVANCE OF RELIGIOUS BELIEFS

SEC. 1907. [42 U.S.C. 1396f] Nothing in this title shall be construed to require any State which has a plan approved under this title to compel any person to undergo any medical screening, examination, diagnosis, or treatment or to accept any other health care or services provided under such plan for any purpose (other than for the purpose of discovering and preventing the spread of infection or contagious disease or for the purpose of protecting environmental health), if such person objects (or, in case such person is a child, his parent or guardian objects) thereto on religious grounds.

STATE PROGRAMS FOR LICENSING OF ADMINISTRATORS OF NURSING HOMES

SEC. 1908. [42 U.S.C. 1396g] (a) For purposes of section 1902(a)(29), a "State program for the licensing of administrators of nursing homes" is a program which provides that no nursing home within the State may operate except under the supervision of an administrator licensed in the manner provided in this section.

(b) Licensing of nursing home administrators shall be carried out by the agency of the State responsible for licensing under the healing arts licensing act of the State, or, in the absence of such act or such an agency, a board representative of the professions and institutions concerned with care of chronically ill and infirm aged patients and established to carry out the purposes of this section.

(c) It shall be the function and duty of such agency or board to—

(1) develop, impose, and enforce standards which must be met by individuals in order to receive a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are of good

[1] As in original. Should be "he or she".
[2] As in original. Should be "he or she".
[3] P.L. 92-603, §287(a); 86 Stat. 1457.

character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as nursing home administrators;

(2) develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

(3) issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards;

(4) establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards;

(5) receive, investigate, and take appropriate action with respect to, any charge or complaint filed with the board to the effect that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards; and

(6) conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the State with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.

(d) No State shall be considered to have failed to comply with the provisions of section 1902(a)(29) because the agency or board of such State (established pursuant to subsection (b)) shall have granted any waiver, with respect to any individual who, during all of the three calendar years immediately preceding the calendar year in which the requirements prescribed in section 1902(a)(29) are first met by the State, has served as a nursing home administrator, of any of the standards developed, imposed, and enforced by such agency or board pursuant to subsection (c).

(e) As used in this section, the term—

(1) "nursing home" means any institution or facility defined as such for licensing purposes under State law, or, if State law does not employ the term nursing home, the equivalent term or terms as determined by the Secretary, but does not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts; and

(2) "nursing home administrator" means any individual who is charged with the general administration of a nursing home whether or not such individual has an ownership interest in such home and whether or not his functions and duties are shared with one or more other individuals.

PENALTIES[1]

SEC. 1909. [42 U.S.C. 1396h] (a) Whoever—

[1]See 18 U.S.C. 1028, 1738 with respect to penalties relating to use of identification documents.

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a State plan approved under this title,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this title, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a State plan approved under this title is convicted of an offense under the preceding provisions of this subsection, the State may at its option (notwithstanding any other provision of this title or of such plan) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b)(1) Whoever knowingly and willfully solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever knowingly and willfully offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this title, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this title,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this title if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this title; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency (as those terms are employed in this title) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under this title, money or other consideration at a rate in excess of the rates established by the State, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under this title, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

CERTIFICATION AND APPROVAL OF SKILLED NURSING FACILITIES AND OF RURAL HEALTH CLINICS[1]

SEC. 1910. [42 U.S.C. 1396i] (a)(1) Whenever the Secretary certifies an institution in a State to be qualified as a skilled nursing facility under title XVIII, such institution shall be deemed to meet the standards for certification as a skilled nursing facility for purposes of section 1902(a)(28).

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any institution which has applied for certification by him as a qualified skilled nursing facility.

(b)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under title XVIII, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(c)(1) The Secretary may cancel approval of any skilled nursing or intermediate care facility at any time if he finds on the basis of a determination made by him as provided in section 1902(a)(33)(B) that a facility fails to meet the requirements contained in section 1902(a)(28) or section 1905(c), or if he finds grounds for termination of his agreement with the facility pursuant to section 1866(b). In that event the Secretary shall notify the State agency and the skilled nursing facility or intermediate care facility that approval of eligibility of the facility to participate in the programs established by this title and title XVIII shall be terminated at a time specified by the Secretary. The approval of eligibility of any such facility to participate in such programs may not be reinstated unless the Secretary finds that the reason for termination has been removed and there is reasonable assurance that it will not recur.

(2) Any skilled nursing facility or intermediate care facility which is dissatisfied with a determination by the Secretary that it no longer qualifies as a skilled nursing facility or intermediate care facility for purposes of this title, shall be entitled to a hearing by the Secretary to the same extent as is provided in section 205(b) and to judicial review of the Secretary's final decision after such hearing as is provided in section 205(g). Any agreement between such facility and the State agency shall remain in effect until the period for filing a request for a hearing has expired or, if a request has been filed, until a decision has been made by the Secretary; except that the agreement shall not be extended if the Secretary makes a written determination, specifying the reasons therefor, that the continuation of provider status constitutes an immediate and serious threat to the health and safety of patients, and the Secretary certifies that the facility has been notified of its deficiencies and has failed to correct them.

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[1]See P.L. 95-210, [Social Security—Rural Health Clinic Services], §1(e), with respect to rural health clinics.

INDIAN HEALTH SERVICE FACILITIES[1]

SEC. 1911. [42 U.S.C. 1396j] (a) A facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility), whether operated by such Service or by an Indian tribe or tribal organization (as those terms are defined in section 4 of the Indian Health Care Improvement Act[2]), shall be eligible for reimbursement for medical assistance provided under a State plan if and for so long as it meets all of the conditions and requirements which are applicable generally to such facilities under this title.

(b) Notwithstanding subsection (a), a facility of the Indian Health Service (including a hospital, intermediate care facility, or skilled nursing facility) which does not meet all of the conditions and requirements of this title which are applicable generally to such facility, but which submits to the Secretary within six months after the date of the enactment of this section[3] an acceptable plan for achieving compliance with such conditions and requirements, shall be deemed to meet such conditions and requirements (and to be eligible for reimbursement under this title), without regard to the extent of its actual compliance with such conditions and requirements, during the first twelve months after the month in which such plan is submitted.

ASSIGNMENT OF RIGHTS OF PAYMENT

SEC. 1912. [42 U.S.C. 1396k] (a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this title, a State plan for medical assistance may—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this title and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party; and

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any

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See P.L. 94-437, "Indian Health Care Improvement Act", §402(b), (c), and (d) with respect to services provided to medicaid eligible Indians and §403 with respect to reports.

[2] P.L. 94-437.

[3] September 30, 1976 [P.L. 94-437, 90 Stat. 1400].

State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 454(3)) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

HOSPITAL PROVIDERS OF SKILLED NURSING AND INTERMEDIATE CARE SERVICES

SEC. 1913. [42 U.S.C. 1396l] (a) Notwithstanding any other provision of this title, payment may be made, in accordance with this section, under a State plan approved under this title for skilled nursing facility services and intermediate care facility services furnished by a hospital which has in effect an agreement under section 1883.

(b)(1) Payment to any such hospital, for any skilled nursing or intermediate care facility services furnished pursuant to subsection (a), shall be at a rate equal to the average rate per patient-day paid for routine services during the previous calendar year under the State plan to skilled nursing and intermediate care facilities, respectively, located in the State in which the hospital is located. The reasonable cost of ancillary services shall be determined in the same manner as the reasonable cost of ancillary services provided for inpatient hospital services.

(2) With respect to any period for which a hospital has an agreement under section 1883, in order to allocate routine costs between hospital and long-term care services, the total reimbursement for routine services due from all classes of long-term care patients (including title XVIII, title XIX, and private pay patients) shall be subtracted from the hospital total routine costs before calculations are made to determine reimbursement for routine hospital services under the State plan.

WITHHOLDING OF FEDERAL SHARE OF PAYMENTS FOR CERTAIN MEDICARE PROVIDERS

SEC. 1914. [42 U.S.C. 1396m] (a) The Secretary may adjust, in accordance with this section, the Federal matching payment to a State with respect to expenditures for medical assistance for care or services furnished in any quarter by—

(1) an institution (A) which has or previously had in effect an agreement with the Secretary under section 1866; and (B)(i) from which the Secretary has been unable to recover overpayments made under title XVIII, or (ii) from which the Secretary has been

unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such institution under title XVIII; and

(2) any person (A) who (i) has previously accepted payment on the basis of an assignment under section 1842(b)(3)(B)(ii), and (ii) during the annual period immediately preceding such quarter submitted no claims for payment under title XVIII, or submitted claims for payment under title XVIII which aggregated less than the amount of overpayments made to him, and (B)(i) from whom the Secretary has been unable to recover overpayments received in violation of the terms of such assignment, or (ii) from whom the Secretary has been unable to collect the information necessary to enable him to determine the amount (if any) of the overpayments made to such person under title XVIII.

(b) The Secretary may (subject to the remaining provisions of this section) reduce payment to a State under this title for any quarter by an amount equal to the lesser of the Federal matching share of payments to any institution or person specified in subsection (a), or the total overpayments to such institution or person under title XVIII, and may require the State to reduce its payment to such institution or person by such amount.

(c) The Secretary shall not make any adjustment in the payment to a State, nor require any adjustment in the payment to an institution or person, pursuant to subsection (b) until after he has provided adequate notice (which shall be not less than 60 days) to the State agency and the institution or person.

(d) The Secretary shall by regulation provide procedures for implementation of this section, which procedures shall (1) determine the amount of the Federal payment to which the institution or person would otherwise be entitled under this section which shall be treated as a setoff against overpayments under title XVIII, and (2) assure the restoration to the institution or person of amounts withheld under this section which are ultimately determined to be in excess of overpayments under title XVIII and to which the institution or person would otherwise be entitled under this title.

(e) The Secretary shall restore to the trust funds established under sections 1817 and 1841, as appropriate, amounts recovered under this section as setoffs against overpayments under title XVIII.

(f) Notwithstanding any other provision of this title, an institution or person shall not be entitled to recover from any State any amount in payment for medical care and services under this title which is withheld by the State agency pursuant to an order by the Secretary under subsection (b).

PROVISIONS RESPECTING INAPPLICABILITY AND WAIVER OF CERTAIN REQUIREMENTS OF THIS TITLE[1]

SEC. 1915. [42 U.S.C. 1396n] (a) A State shall not be deemed to be out of compliance with the requirements of paragraphs (1), (10), or (23) of section 1902(a) solely by reason of the fact that the State (or any political subdivision thereof)—

(1) has entered into—

[1]P.L. 97-35, §2175(b), added §1915, effective August 13, 1981.

(A) a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic; or

(B) arrangements through a competitive bidding process or otherwise for the purchase of laboratory services referred to in section 1905(a)(3) or medical devices if the Secretary has found that—

(i) adequate services or devices will be available under such arrangements, and

(ii) any such laboratory services will be provided only through laboratories—

(I) which meet the applicable requirements of section 1861(e)(9) or paragraphs (11) and (12) of section 1861(s), and such additional requirements as the Secretary may require, and

(II) no more than 75 percent of whose charges for such services are for services provided to individuals who are entitled to benefits under this title or under part A or part B of title XVIII; or

(2) restricts—

(A) for a reasonable period of time the provider or providers from which an individual (eligible for medical assistance for items or services under the State plan) can receive such items or services, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the individual has utilized such items or services at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or

(B) (through suspension or otherwise) for a reasonable period of time the participation of a provider of items or services under the State plan, if the State has found, after notice and opportunity for a hearing (in accordance with procedures established by the State), that the provider has (in a significant number or proportion of cases) provided such items or services either (i) at a frequency or amount not medically necessary (as determined in accordance with utilization guidelines established by the State), or (ii) of a quality which does not meet professionally recognized standards of health care,

if, under such restriction, individuals eligible for medical assistance for such services have reasonable access (taking into account geographic location and reasonable travel time) to such services of adequate quality.

(b) The Secretary, to the extent he finds it to be cost-effective and efficient and not inconsistent with the purposes of this title, may waive such requirements of section 1902[1] as may be necessary for a

[1]P.L. 97-248, §137(b)(19)(A), struck out "and section 1903(m)", effective as if it had been originally included in P.L. 97-35, except that this amendment shall not apply with respect to any waiver if such waiver was granted, and the arrangement covered by the waiver was in place, prior to Au-

State—

(1) to implement a primary care[1] case-management system or a specialty physician services arrangement which restricts the provider from (or through) whom an individual (eligible for medical assistance under this title) can obtain medical[2] care services (other than in emergency circumstances), if such restriction does not substantially impair access to such services of adequate quality where medically necessary,

(2) to allow a locality to act as a central broker in assisting individuals (eligible for medical assistance under this title) in selecting among competing health care plans, if such restriction does not substantially impair access to services of adequate quality where medically necessary,

(3) to share (through provision of additional services) with recipients of medical assistance under the State plan cost savings resulting from use by the recipient of more cost-effective medical care, and

(4) to restrict the provider from (or through) whom an individual (eligible for medical assistance under this title) can obtain services (other than in emergency circumstances) to providers or practitioners who undertake to provide such services and who meet, accept, and comply with the reimbursement, quality, and utilization standards under the State plan, which standards are consistent with access, quality, and efficient and economic provision of covered care and services, if such restriction does not discriminate among classes of providers on grounds unrelated to their demonstrated effectiveness and efficiency in providing those services.

(c)(1) The Secretary may by waiver provide that a State plan approved under this part[3] may include as "medical assistance" under such plan payment for part or all of the cost of[4] home or community-based services (other than room and board) approved by the Secretary which are provided pursuant to a written plan of care to individuals with respect to whom there has been a determination that but for the provision of such services the individuals would require the level of care provided in a skilled nursing facility or intermediate care facility the cost of which could be reimbursed under the State plan.

(2) A waiver shall not be granted under this subsection unless the State provides assurances satisfactory to the Secretary that—

(A) necessary safeguards (including adequate standards for provider participation) have been taken to protect the health and welfare of individuals provided services under the waiver and to assure financial accountability for funds expended with respect to such services;

(B) the State will provide, with respect to individuals who—

(i) are entitled to medical assistance for skilled nursing facility or intermediate care facility services under the State plan,

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gust 10, 1982.

[1]P.L. 97-248, §137(b)(20)(A), inserted "primary care", effective as if it had been originally included in P.L. 97-35.

[2]P.L. 97-248, §137(b)(20)(B), struck out "primary" and substituted "medical", effective as if it had been originally included in P.L. 97-35.

[3]As in original. Title XIX does not have parts.

[4]P.L. 97-248, §137(b)(21), inserted "payment for part or all of the cost of", effective as if it had been originally included in P.L. 97-35.

(ii) may require such services, and

(iii) may be eligible for such home or community-based care under such waiver,

for an evaluation of the need for such skilled nursing facility or intermediate care facility[1] services;[2]

(C) such individuals who are determined to be likely to require the level of care provided in a skilled nursing facility or intermediate care facility are informed of the feasible alternatives, if available under the waiver, at the choice of such individuals, to the provision of skilled nursing facility or intermediate care facility services;

(D) under such waiver the average per capita expenditure estimated by the State in any fiscal year for medical assistance provided with respect to such individuals does not exceed the average per capita expenditure that the State reasonably estimates would have been made in that fiscal year for expenditures under the State plan for such individuals if the waiver had not been granted; and

(E) the State will provide to the Secretary annually, consistent with a data collection plan designed by the Secretary, information on the impact of the waiver granted under this subsection on the type and amount of medical assistance provided under the State plan and on the health and welfare of recipients.

(3) A waiver granted under this subsection may include a waiver of the requirements of section 1902(a)(1)[3] (relating to statewideness) and section 1902(a)(10)[4]. A waiver under this subsection shall be for an initial term of three years and, upon the request of a State, shall be extended for additional three-year periods unless the Secretary determines that for the previous three-year period the assurances provided under paragraph (2) have not been met.

(4) A waiver granted under this subsection[5] may, consistent with paragraph (2)—

(A) limit the individuals provided benefits under such waiver to individuals with respect to whom the State has determined that there is a reasonable expectation that the amount of medical assistance provided with respect to the individual under such waiver will not exceed the amount of such medical assistance provided for such individual if the waiver did not apply, and

(B) provide medical assistance to individuals (to the extent consistent with written plans of care, which are subject to the approval of the State) for case management services, homemaker/home health aide services and personal care services, adult day health services, habilitation services, respite care, and such other services requested by the State as the Secretary may approve.[6]

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[1]P.L. 97-448, §309(b)(17), inserted "skilled nursing facility or intermediate care facility", effective as if it had been originally included in P.L. 97-248. If it had been originally included in P.L. 97-248, the effective date would have been as if it had been originally included in P.L. 97-35.

[2]P.L. 97-248, §137(b)(22), amended subparagraph (B) in its entirety, effective as if it had been originally included in P.L. 97-35.

[3]P.L. 97-248, §137(b)(23)(A), struck out "subsection (a)(1)" and substituted "section 1902(a)(1)", effective as if it had been originally included in P.L. 97-35.

[4]P.L. 97-248, §137(b)(23)(B), struck out "subsection (a)(10) of section 1902" and substituted "section 1902(a)(10)", effective as if it had been originally included in P.L. 97-35.

[5]P.L. 97-248, §137(b)(24), struck out "section" and substituted "subsection", effective as if it had been originally included in P.L. 97-35.

[6]P.L. 97-35, §2176(2), inserted this subsection (c), effective August 13, 1981.

(d)[1] No waiver under this section (other than a waiver under subsection (c))[2] may extend over a period of longer than two years unless the State requests continuation of such waiver, and such request shall be deemed granted unless the Secretary denies such request in writing within 90 days after the date of its submission to the Secretary.

(e)[3](1) The Secretary shall monitor the implementation of waivers granted under this section to assure that the requirements for such waiver are being met and shall, after notice and opportunity for a hearing, terminate any such waiver where he finds noncompliance has occurred.

(2) The Secretary shall report, not later than September 30, 1984, to Congress on waivers granted under this section.

(f) A request to the Secretary from a State for approval of[4] a proposed State plan or plan amendment or a waiver of a requirement of this title submitted by the State pursuant to a provision of this title shall be deemed granted unless the Secretary, within 90 days after the date of its submission to the Secretary, either denies such request in writing or informs the State agency in writing with respect to any additional information which is needed in order to make a final determination with respect to the request. After the date the Secretary receives such additional information, the request shall be deemed granted unless the Secretary, within 90 days of such date, denies such request.[5]

USE OF ENROLLMENT FEES, PREMIUMS, DEDUCTIONS, COST SHARING, AND SIMILAR CHARGES[6]

SEC. 1916. [42 U.S.C. 1396o] (a) The State plan shall provide that in the case of individuals described in section 1902(a)(10)(A) who are eligible under the plan—

(1) no enrollment fee, premium, or similar charge will be imposed under the plan;

(2) no deduction, cost sharing or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care

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[1]P.L. 97-35, §2176(2), redesignated the former subsection (c) as subsection (d), effective August 13, 1981.

[2]P.L. 97-35, §2176(1), inserted "(other than a waiver under subsection (c))", effective August 13, 1981.

[3]P.L. 97-35, §2176(2), redesignated the former subsection (d) as subsection (e), effective August 13, 1981.

[4]P.L. 97-248, §137(b)(25), inserted "approval of", effective as if it had been originally included in P.L. 97-35.

[5]P.L. 97-35, §2177(a), added subsection (f), effective November 11, 1981.

[6]P.L. 97-248, §131(b), added §1916, effective October 1, 1982, except where State legislation is needed. For the effective date where State legislation is needed, see P.L. 97-248, "Tax Equity and Fiscal Responsibility Act of 1982", §131(d)(2) [as redesignated by P.L. 97-448, §309(a)(8)], p. 792.

facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, or

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1905(a)(4)(C), or services furnished to such an individual by a health maintenance organization (as defined in section 1903(m)) in which he is enrolled; and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of "nominal" under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(b) The State plan shall provide that in the case of individuals other than those described in section 1902(a)(10)(A) who are eligible under the plan—

(1) there may be imposed an enrollment fee, premium, or similar charge, which (as determined in accordance with standards prescribed by the Secretary) is related to the individual's income,

(2) no deduction, cost sharing, or similar charge will be imposed under the plan with respect to—

(A) services furnished to individuals under 18 years of age (and, at the option of the State, individuals under 21, 20, or 19 years of age, or any reasonable category of individuals 18 years of age or over),

(B) services furnished to pregnant women, if such services relate to the pregnancy or to any other medical condition which may complicate the pregnancy (or, at the option of the State, any services furnished to pregnant women),

(C) services furnished to any individual who is an inpatient in a hospital, skilled nursing facility, intermediate care facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, or

(D) emergency services (as defined by the Secretary), family planning services and supplies described in section 1905(a)(4)(C), or (at the option of the State) services furnished

to such an individual by a health maintenance organization (as defined in section 1903(m)) in which he is enrolled; and

(3) any deduction, cost sharing, or similar charge imposed under the plan with respect to other such individuals or other care and services will be nominal in amount (as determined by the Secretary in regulations which shall, if the definition of "nominal" under the regulations in effect on July 1, 1982 is changed, take into account the level of cash assistance provided in such State and such other criteria as the Secretary determines to be appropriate); except that a deduction, cost-sharing, or similar charge of up to twice the nominal amount established for outpatient services may be imposed by a State under a waiver granted by the Secretary for services received at a hospital emergency room if the services are not emergency services (referred to in paragraph (2)(D)) and the State has established to the satisfaction of the Secretary that individuals eligible for services under the plan have actually available and accessible to them alternative sources of nonemergency, outpatient services.

(c) The State plan shall require that no provider participating under the State plan may deny care or services to an individual eligible for such care or services under the plan on account of such individual's inability to pay a deduction, cost sharing, or similar charge. The requirements of this subsection[1] shall not extinguish the liability of the individual to whom the care or services were furnished for payment of the deduction, cost sharing, or similar charge.

(d) No deduction, cost sharing, or similar charge may be imposed under any waiver authority of the Secretary, except as provided in subsections (a)(3) and (b)(3)[2], unless such waiver is for a demonstration project which the Secretary finds after public notice and opportunity for comment—

(1) will test a unique and previously untested use of copayments,

(2) is limited to a period of not more than two years,

(3) will provide benefits to recipients of medical assistance which can reasonably be expected to be equivalent to the risks to the recipients,

(4) is based on a reasonable hypothesis which the demonstration is designed to test in a methodologically sound manner, including the use of control groups of similar recipients of medical assistance in the area, and

(5) is voluntary, or makes provision[3] for assumption of liability for preventable damage to the health of recipients of medical assistance resulting from involuntary participation.

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[1] P.L. 97-448, §309(b)(18), struck out "subparagraph" and substituted "subsection", effective as if it had been originally included by P.L. 97-248.

[2] P.L. 97-448, §309(b)(19), struck out "unless authorized under this section" and substituted ", except as provided in subsections (a)(3) and (b)(3)", effective as if it had been originally included by P.L. 97-248.

[3] P.L. 97-448, §309(b)(20), struck out "in which participation is voluntary, or in which provision is made" and substituted "is voluntary, or makes provision", effective as if it had been originally included by P.L. 97-248.

LIENS, ADJUSTMENTS AND RECOVERIES, AND TRANSFERS OF ASSETS[1]

SEC. 1917. [42 U.S.C. 1396p] (a)(1) No lien may be imposed against the property of any individual prior to his death on account of medical assistance paid or to be paid on his behalf under the State plan, except—

(A) pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual, or

(B) in the case of the real property of an individual—

(i) who is an inpatient in a skilled nursing facility, intermediate care facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and

(ii) with respect to whom the State determines, after notice and opportunity for a hearing (in accordance with procedures established by the State), that he cannot reasonably be expected to be discharged from the medical institution and to return home,

except as provided in paragraph (2).

(2) No lien may be imposed under paragraph (1)(B) on such individual's home if—

(A) the spouse of such individual,

(B) such individual's child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614, or

(C) a sibling of such individual (who has an equity interest in such home and who was residing in such individual's home for a period of at least one year immediately before the date of the individual's admission to the medical institution),

is lawfully residing in such home.

(3) Any lien imposed with respect to an individual pursuant to paragraph (1)(B) shall dissolve upon that individual's discharge from the medical institution and return home.

(b)(1) No adjustment or recovery of any medical assistance correctly paid on behalf of an individual under the State plan may be made, except—

(A) in the case of an individual described in subsection (a)(1)(B), from his estate or upon sale of the property subject to a lien imposed on account of medical assistance paid on behalf of such individual, and

(B) in the case of any other individual who was 65 years of age or older when he received such assistance, from his estate.

(2) Any adjustment or recovery under paragraph (1) may be made only after the death of the individual's surviving spouse, if any, and only at a time—

(A) when he has no surviving child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently

[1] P.L. 97-248, §132(b), added §1917, effective September 3, 1982, except that §1917(c)(2)(B) shall not apply with respect to a transfer of assets which took place before that date.

and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614; and

(B) in the case of a lien on an individual's home under subsection (a)(1)(B), when—

(i) no sibling of the individual (who was residing in the individual's home for a period of at least one year immediately before the date of the individual's admission the medical institution), and

(ii) no son or daughter of the individual (who was residing in the individual's home for a period of at least two years immediately before the date of the individual's admission to the medical institution, and who establishes to the satisfaction of the State that he or she provided care to such individual which permitted such individual to reside at home rather than in an institution),

is lawfully residing in such home who[1] has lawfully resided in such home on a continuous basis since the date of the individual's admission to the medical institution.

(c)(1) Notwithstanding any other provision of this title, an individual who would otherwise be eligible for medical assistance under the State plan approved under this title may be denied such assistance if such individual would not be eligible for such medical assistance but for the fact that he disposed of resources for less than fair market value. If the State plan provides for the denial of such assistance by reason of such disposal of resources, the State plan shall specify a procedure for implementing such denial which, except as provided in paragraph (2), is not more restrictive than the procedure specified in section 1613(c) of this Act, and which may provide for a waiver of denial of such assistance in any instance where the State determines that such denial would work an undue hardship.

(2)(A) In any case where the uncompensated value of disposed of resources exceeds $12,000, the State plan may provide for a period of ineligibility which exceeds 24 months. If a State plan provides for a period of ineligibility exceeding 24 months, such plan shall provide for the period of ineligibility to bear a reasonable relationship to such uncompensated value.

(B)(i) In the case of any individual who is an inpatient in a skilled nursing facility, intermediate care facility, or other medical institution, if such individual is required, as a condition of receiving services in such institution under the State plan, to spend for costs of medical care all but a minimal amount of his income required for personal needs, and, who, at any time during or after the 24-month period immediately prior to application for medical assistance under the State plan, disposed of a home for less than fair market value, the State plan (subject to clause (iii)) may provide for a period of ineligibility for medical assistance in accordance with clause (ii).

(ii) If the State plan provides for a period of ineligibility under clause (i), such plan—

(I) shall provide that such individual shall be ineligible for all medical assistance for a period of 24 months after the date on which he disposed of such home, except that, in the case where

[1] P.L. 97-448, §309(b)(21), struck out "and" and substituted "who", effective as if it had been originally included in P.L. 97-248.

the uncompensated value of the home is less than the average amount payable under the State plan as medical assistance for 24 months of care in a skilled nursing facility, the period of ineligibility shall be such shorter time as bears a reasonable relationship (based upon the average amount payable under the State plan as medical assistance for care in a skilled nursing facility) to the uncompensated value of the home, and

(II) may provide (at the option of the State) that, in the case where the uncompensated value of the home is more than the average amount payable under the State plan as medical assistance for 24 months of care in a skilled nursing facility, such individual shall be ineligible for all medical assistance for a period in excess of 24 months after the date on which he disposed of such home which bears a reasonable relationship (based upon the average amount payable under the State plan as medical assistance for care in a skilled nursing facility) to the uncompensated value of the home.

(iii) An individual shall not be ineligible for medical assistance by reason of clause (ii) if—

(I) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that the individual can[1] reasonably be expected to be discharged from the medical institution and to return to that home,

(II) title to such home was transferred to the individual's spouse or child who is under age 21, or (with respect to States eligible to participate in the State program established under title XVI) is blind or permanently and totally disabled, or (with respect to States which are not eligible to participate in such program) is blind or disabled as defined in section 1614,

(III) a satisfactory showing is made to the State (in accordance with any regulations promulgated by the Secretary) that the individual intended to dispose of the home either at fair market value, or for other valuable consideration, or

(IV)[2] the State determines that denial of eligibility would work an undue hardship.

(3) In any case where an individual is ineligible for medical assistance under the State plan solely because of the applicability to such individual of the provisions of section 1613(c), the State plan may provide for the eligibility of such individual for medical assistance under the plan if such individual would be so eligible if the State plan requirements with respect to disposal of resources applicable under paragraphs (1) and (2) of this subsection were applied in lieu of the provisions of section 1613(c).

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[1] P.L. 97-448, §309(b)(22)(A), struck out "cannot" and substituted "can", effective as if it had been originally included in P.L. 97-248.

[2] P.L. 97-448, §309(b)(22)(B), struck out "if", effective as if it had been originally included in P.L. 97-248.

TITLE XX—BLOCK GRANTS TO STATES FOR SOCIAL SERVICES[1]

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PURPOSES OF TITLE; AUTHORIZATION OF APPROPRIATIONS

SEC. 2001. [42 U.S.C. 1397] For the purposes of consolidating Federal assistance to States for social services into a single grant, increasing State flexibility in using social service grants, and encouraging each State, as far as practicable under the conditions in that State, to furnish services directed at the goals of—

(1) achieving or maintaining economic self-support to prevent, reduce, or eliminate dependency;

(2) achieving or maintaining self-sufficiency, including reduction or prevention of dependency;

(3) preventing or remedying neglect, abuse, or exploitation of children and adults unable to protect their own interests, or preserving, rehabilitating or reuniting families;

(4) preventing or reducing inappropriate institutional care by providing for community-based care, home-based care, or other forms of less intensive care; and

(5) securing referral or admission for institutional care when other forms of care are not appropriate, or providing services to individuals in institutions,

there are authorized to be appropriated for each fiscal year such sums as may be necessary to carry out the purposes of this title.

PAYMENTS TO STATES

SEC. 2002. [42 U.S.C. 1397a] (a)(1) Each State shall be entitled to payment under this title for each fiscal year in an amount equal to its allotment for such fiscal year, to be used by such State for

[1] Title XX of the Social Security Act is administered by the Administration for Public Services, Office of Human Development Services, Department of Health and Human Services.

Title XX appears in the United States Code as §§1397-1397f, subchapter XX, chapter 7, Title 42.

Regulations of the Secretary of Health and Human Services relating to Title XX are contained in part 96, subtitle A, Title 45, Code of Federal Regulations.

P.L. 97-35, §2352(a), amended Title XX in its entirety, effective October 1, 1981.

[2] This table of contents does not appear in the law.

services directed at the goals set forth in section 2001, subject to the requirements of this title.

(2) For purposes of paragraph (1)—

(A) services which are directed at the goals set forth in section 2001 include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, family planning services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts; and

(B) expenditures for such services may include expenditures for—

(i) administration (including planning and evaluation);

(ii) personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions); and

(iii) conferences or workshops, and training or retraining through grants to nonprofit organizations within the meaning of section 501(c)(3) of the Internal Revenue Code of 1954[1] or to individuals with social services expertise, or through financial assistance to individuals participating in such conferences, workshops, and training or retraining (and this clause shall apply with respect to all persons involved in the delivery of such services).

(b) The Secretary shall make payments in accordance with section 203 of the Intergovernmental Cooperation Act of 1968[2] (42 U.S.C. 4213) to each State from its allotment for use under this title.

(c) Payments to a State from its allotment for any fiscal year must be expended by the State in such fiscal year or in the succeeding fiscal year.

(d) A State may transfer up to 10 percent of its allotment under section 2003 for any fiscal year for its use for that year under other provisions of Federal law providing block grants for support of health services, health promotion and disease prevention activities, or low-income home energy assistance (or any combination of those activities). Amounts allotted to a State under any provisions of Federal law referred to in the preceding sentence and transferred by a State for use in carrying out the purposes of this title shall be treated as if they were paid to the State under this title but shall not affect the computation of the State's allotment under this title. The State shall inform the Secretary of any such transfer of funds.

(e) A State may use a portion of the amounts described in subsection (a) for the purpose of purchasing technical assistance from public or private entities if the State determines that such assistance

[1] P.L. 83-591.

[2] P.L. 90-577; however, P.L. 90-577 was repealed by P.L. 97-258 [Codification of Title 31, U.S. Code]. See, instead, 31 U.S.C. 6504-6505.

is required in developing, implementing, or administering programs funded under this title.

ALLOTMENTS

SEC. 2003. [42 U.S.C. 1397b] (a) The allotment for any fiscal year to each of the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to the amount specified in subsection (c) as the amount which was specified for allocation to the particular jurisdiction involved for the fiscal year 1981 under section 2002(a)(2)(C) of this Act (as in effect prior to the enactment of this section[1]) bore to $2,900,000,000.

(b) The allotment for any fiscal year for each State other than the jurisdictions of Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands shall be an amount which bears the same ratio to—

(1) the amount specified in subsection (c), reduced by

(2) the total amount allotted to those jurisdictions for that fiscal year under subsection (a),

as the population of that State bears to the population of all the States (other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)[2] as determined by the Secretary (on the basis of the most recent data available from the Department of Commerce) and promulgated (subject to subsection (d)) prior to the first day of the third month of the preceding fiscal year.

(c) The amount specified for purposes of subsections (a) and (b) shall be—

(1) $2,400,000,000 for the fiscal year 1982;

(2) $2,450,000,000 for the fiscal year 1983; and

(3) $2,700,000,000 for the fiscal year 1984 and each succeeding fiscal year.[3]

(d) The determination and promulgation required by subsection (b) with respect to the fiscal year 1982 shall be made as soon as possible after the enactment of the Omnibus Budget Reconciliation Act of 1981[4].

STATE ADMINISTRATION

SEC. 2004. [42 U.S.C. 1397c] Prior to expenditure by a State of payments made to it under section 2002 for any fiscal year, the State shall report on the intended use of the payments the State is to receive under this title, including information on the types of activities to be supported and the categories or characteristics of individuals to be served. The report shall be transmitted to the Secretary and made public within the State in such manner as to facilitate comment by any person (including any Federal or other public agency) during development of the report and after its completion. The report shall be revised throughout the year as may be necessary to reflect substantial changes in the activities assisted

[1] August 13, 1981 [P.L. 97-35; 95 Stat. 357].

[2] P.L. 97-248, §160(b), inserted "(other than Puerto Rico, Guam, the Virgin Islands, and the Northern Mariana Islands)", effective October 1, 1981.

[3] P.L. 98-135, §204(2), amended paragraph (3) in its entirety and struck out paragraphs (4) and (5), effective October 24, 1983.

[4] August 13, 1981 [P.L. 97-35; 95 Stat. 357].

under this title, and any revision shall be subject to the requirements of the previous sentence.

LIMITATIONS ON USE OF GRANTS

SEC. 2005. [42 U.S.C. 1397d] (a) Except as provided in subsection (b), grants made under this title may not be used by the State, or by any other person with which the State makes arrangements to carry out the purposes of this title—

(1) for the purchase or improvement of land, or the purchase, construction, or permanent improvement (other than minor remodeling) of any building or other facility;

(2) for the provision of cash payments for costs of subsistence or for the provision of room and board (other than costs of subsistence during rehabilitation, room and board provided for a short term as an integral but subordinate part of a social service, or temporary emergency shelter provided as a protective service);

(3) for payment of the wages of any individual as a social service (other than payment of the wages of welfare recipients employed in the provision of child day care services);

(4) for the provision of medical care (other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual) unless it is an integral but subordinate part of a social service for which grants may be used under this title;

(5) for social services (except services to an alcoholic or drug dependent individual or rehabilitation services) provided in and by employees of any hospital, skilled nursing facility, intermediate care facility, or prison, to any individual living in such institution;

(6) for the provision of any educational service which the State makes generally available to its residents without cost and without regard to their income;

(7) for any child day care services unless such services meet applicable standards of State and local law; or

(8) for the provision of cash payments as a service (except as otherwise provided in this section).

(b) The Secretary may waive the limitation contained in subsection (a) (1) and (4) upon the State's request for such a waiver if he finds that the request describes extraordinary circumstances to justify the waiver and that permitting the waiver will contribute to the State's ability to carry out the purposes of this title.

REPORTS AND AUDITS

SEC. 2006. [42 U.S.C. 1397e] (a) Each State shall prepare reports on its activities carried out with funds made available (or transferred for use) under this title. Reports shall be in such form, contain such information, and be of such frequency (but not less often than every two years) as the State finds necessary to provide an accurate description of such activities, to secure a complete record of the purposes for which funds were spent, and to determine the extent to which funds were spent in a manner consistent with the reports required by section 2004. The State shall make copies of the reports

required by this section available for public inspection within the State and shall transmit a copy to the Secretary. Copies shall also be provided, upon request, to any interested public agency, and each such agency may provide its views on these reports to the Congress.

(b) Each State shall, not less often than every two years, audit its expenditures from amounts received (or transferred for use) under this title. Such State audits shall be conducted by an entity independent of any agency administering activities funded under this title, in accordance with generally accepted auditing principles. Within 30 days following the completion of each audit, the State shall submit a copy of that audit to the legislature of the State and to the Secretary. Each State shall repay to the United States amounts ultimately found not to have been expended in accordance with this title, or the Secretary may offset such amounts against any other amount to which the State is or may become entitled under this title.

(c) For other provisions requiring States to account for Federal grants, see section 202 of the Intergovernmental Cooperation Act of 1968[1] (42 U.S.C. 4212).

CHILD DAY CARE SERVICES

SEC. 2007. [42 U.S.C. 1397f] (a) Subject to subsection (b), sums granted by a State to a qualified provider of child day care services (as defined in subsection (c)) to assist such provider in meeting its work incentive program expenses (as defined in subsection (c)) with respect to individuals employed in jobs related to the provision of child day care services in one or more child day care facilities of such provider, shall be deemed for purposes of section 2002 to constitute expenditures made by the State in accordance with the provisions of this title for the provision of child day care services.

(b) The provisions of subsection (a) shall not be applicable with respect to any grant made to a particular qualified provider of child day care services to the extent that (as determined by the Secretary) such grant is or will be used to pay wages to any employee at an annual rate in excess of $6,000, in the case of a public or nonprofit private provider, or at an annual rate in excess of $5,000, or to pay more than 80 percent of the wages of any employee, in the case of any other provider.

(c) For purposes of this subsection—

(1) the term "qualified provider of child day care services", when used in reference to a recipient of a grant by a State, includes a provider of such services only if, of the total number of children receiving such services from such provider in the facility with respect to which the grant is made, at least 20 percent thereof have some or all of the costs for the child day care services so furnished to them by such provider paid for under a program conducted pursuant to this title; and

(2) the term "work incentive program expenses" means expenses of a qualified provider of child day care services which constitute work incentive program expenses as defined in section 50B(a)(1) of the Internal Revenue Code of 1954[2], or which would

[1] P.L. 90-577; however, P.L. 90-577 was repealed by P.L. 97-258 [Codification of Title 31, U.S. Code]. See, instead, 31 U.S.C. 6504-6505.

[2] P.L. 83-591.

constitute work incentive program expenses as so defined if the provider were a taxpayer entitled to a credit (with respect to the wages involved) under section 40 of such Code[1].

[1]P.L. 83-591.

EFFECTIVE DATES[1]

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P.L. 95-216, Approved December 20, 1977 (91 Stat. 1509)

"Social Security Amendments of 1977"

* * * * * * *

SEC. 334. * * *

(f) [42 U.S.C. 402 note] Subject to subsections (g) and (h), the[3] amendments made by this section shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act for months beginning with the month in which this Act is enacted, on the basis of applications filed in or after the month in which this Act is enacted.

(g) [42 U.S.C. 402 note] (1) The amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(A) to whom there is payable for any month within the 60-month period beginning with the month in which this Act is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and

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[1]These effective dates were too complex to insert in footnotes.

[2]Information within [ ] is supplied.

[3]P.L. 97-455, §7(a)(2), struck out "The" and substituted "Subject to subsections (g) and (h), the", effective with respect to monthly benefits for months after November 1982.

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(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid.

(h) [42 U.S.C. 402 note] In addition, the amendments made by the preceding provisions of this section shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act, to an individual—

(1) to whom there is payable for any month prior to July 1983 (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act); and

(2) who at the time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g)—

(A) meets the dependency test of one-half support set forth in paragraph (1)(C) of such subsection (c) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (b) or (c), or

(B) meets the dependency test of one-half support set forth in paragraph (1)(D) of such subsection (f) as it read prior to the enactment of the amendments made by this section, or an equivalent dependency test (if the individual is a woman), in the case of an individual applying for or becoming entitled to benefits under such subsection (e), (f), or (g).[1]

* * * * * * *

[1]P.L. 97-455, §7(a)(1), added subsection (h), effective with respect to monthly benefits for months after November 1982.

P.L. 97-35, Approved August 13, 1981 (95 Stat. 357)

"Omnibus Budget Reconciliation Act of 1981"

* * * * * * *

SEC. 2143. * * *

(b) [42 U.S.C. 1395x note] (1) Subject to paragraph (2), the amendment made by subsection (a) shall apply to cost[1] reporting periods ending after September 30, 1981.

(2) In the case of a cost reporting period beginning before October 1, 1981, any reduction in payments resulting from the amendment made by subsection (a) shall be imposed only in proportion to the part of the period that occurs after September 30, 1981.

* * * * * * *

SEC. 2175. * * *

(d) * * *

(2) [42 U.S.C. 1396a note] (A) The amendments made by paragraph (1) shall (except as provided under subparagraph (B)) be effective with respect to payments under title XIX of the Social Security Act for calendar quarters beginning on or after October 1, 1981.

(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirement imposed by the amendment made by paragraph (1)(C), the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet this additional requirement before the first day of the first calendar year beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

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SEC. 2178. * * *

(c) [42 U.S.C. 1396a note] The amendments made by this section shall apply with respect to services furnished, under a State plan approved under title XIX of the Social Security Act, on or after October 1, 1981; except that such amendments shall not apply with respect to services furnished by a health maintenance organization under a contract with a State entered into under such title before October 1, 1981 unless the organization requests that such amendments apply and the Secretary of Health and Human Services and the single State agency (administering or supervising the administration of the State plan under such title) agree to such request.

* * * * * * *

SEC. 2181. * * *

(b) [42 U.S.C. 603 note] The amendment made by subsection (a)(1) shall apply to reductions for calendar quarters beginning on or after

[1] P.L. 97-248, §128(c)(1), struck out "costs" and substituted "cost", effective as if it had been originally included in that provision of P.L. 97-35.

June 30, 1974, and the amendments made by subsection (a)(2) shall take effect on October 1, 1981, except that, in the case of a State plan under title XIX of the Social Security Act which the Secretary determines requires State legislation in order to incorporate the provisions required to be included by this section into such State plan, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to include the provisions required to be included in such State plan by subsection (a)(2) of this section before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act, but the requirements previously set forth in paragraphs (1) through (3) of section 403(g) of the Social Security Act (prior to its repeal by this section) shall apply under title XIX of such Act to such State on and after October 1, 1981, whether or not the provisions required to be included by this section in the State plan under title XIX have been incorporated into such State plan[1].

* * * * * * *

SEC. 2194. [42 U.S.C. 701 note] (a) Except as otherwise provided in this section, the amendments made by sections 2192 and 2193 of this subtitle do not apply to any grant made, or contract entered into, or amounts payable to States under State plans before the earlier of—

(1) October 1, 1982, or

(2)(A) in the case of such grants, contracts, or payments under consolidated State programs (as defined in subsection (c)(2)(C)) to a State (or entities in the State), the date the State is first entitled to an allotment under title V of the Social Security Act (as amended by this subtitle), or

(B) in the case of grants and contracts under consolidated Federal programs (as defined in subsection (c)(2)(B)), October 1, 1981, or such later date (before October 1, 1982) as the Secretary determines to be appropriate.

* * * * * * *

SEC. 2204. [42 U.S.C. 403 note] (a) Notwithstanding subsection (e) of section 302 of the Social Security Amendments of 1977 (91 Stat. 1531; Public Law 95-216), the amendments made to section 203 of the Social Security Act by subsections (a) through (d) of such section 302 shall, except as provided in subsection (b) of this section, apply only with respect to monthly insurance benefits payable under title II of the Social Security Act for months after December 1982.

(b) In the case of any individual whose first taxable year (as in effect on the date of the enactment of this Act) ending after December 31, 1981, begins before January 1, 1982, the amendments made by section 302 of the Social Security Amendments of 1977 shall apply with respect to taxable years beginning with such taxable year.

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SEC. 2210. * * *

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[1]P.L. 97-248, §137(a)(4), inserted ", except that" and all that follows through "incorporated into such State plan", effective as if it had been originally included in that provision of P.L. 97-35.

(b) [42 U.S.C. 402 note] Except as provided in subsection (c), the amendments made by subsection (a) shall apply to child's insurance benefits under section 202(d) of the Social Security Act for months after July 1982.

(c) [42 U.S.C. 402 note] (1) Notwithstanding the provisions of section 202(d) of the Social Security Act (as in effect prior to or after the amendments made by subsection (a)), any individual who—

(A) has attained the age of 18;

(B) is not under a disability (as defined in section 223(d) of such Act);

(C) is entitled to a child's insurance benefit under such section 202(d) for August 1981; and

(D) is a full-time student at a postsecondary school, college, or university that is an educational institution (as such terms are defined in section 202(d)(7)(A) and (C) of such Act as in effect prior to the amendments made by subsection (a)) for any month prior to May 1982;

shall be entitled to a child's benefit under section 202(d) of such Act in accordance with the provisions of such section as in effect prior to the amendments made by subsection (a) for any month after July 1981 and prior to August 1985 if such individual would be entitled to such child's benefit for such month under such section 202(d) if subsections (a) and (b) of this section had not been enacted, but such benefits shall be subject to the limitations set forth in this subsection.

(2) No benefit described in paragraph (1) shall be paid to an individual to whom paragraph (1) applies for the months of May, June, July, and August, beginning with benefits otherwise payable for May 1982.

(3) The amount of the monthly benefit payable under paragraph (1) to an individual to whom paragraph (1) applies for any month after July 1982 (prior to deductions on account of work required by section 203 of such Act) shall not exceed the amount of the benefit to which such individual was entitled for August 1981 (prior to deductions on account of work required by section 203 of such Act), less an amount—

(A) during the months after July 1982 and before August 1983, equal to 25 percent of such benefit for August 1981;

(B) during the months after July 1983 and before August 1984, equal to 50 percent of such benefit for August 1981; and

(C) during the months after July 1984 and before August 1985, equal to 75 percent of such benefit for August 1981.

(4) Any individual to whom the provisions of paragraph (1) apply and whose entitlement to benefits under paragraph (1) ends after July 1982 shall not subsequently become entitled, or reentitled, to benefits under paragraph (1) or under section 202(d) of the Social Security Act as in effect after the amendments made by subsection (a) unless he meets the requirements of section 202(d)(1)(B)(ii) of that Act as so in effect.

. . . . . .

SEC. 2321. [42 U.S.C. 602 note] (a) Except as otherwise specifically provided in the preceding sections of this chapter or in subsection (b),

the provisions of this chapter and the amendments and repeals made by this chapter shall become effective on October 1, 1981.

(b) If a State agency administering a plan approved under part A of title IV of the Social Security Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

* * * * * * *

SEC. 2336. [42 U.S.C. 651 note] (a) Except as otherwise specifically provided in the preceding sections of this chapter or in subsection (b), the provisions of this chapter and the amendments and repeals made by this chapter shall become effective on October 1, 1981.

(b) If a State agency administering a plan approved under part D of title IV of the Social Security Act demonstrates, to the satisfaction of the Secretary of Health and Human Services, that it cannot, by reason of State law, comply with the requirements of an amendment made by this chapter to which the effective date specified in subsection (a) applies, the Secretary may prescribe that, in the case of such State, the amendment will become effective beginning with the first month beginning after the close of the first session of such State's legislature ending on or after October 1, 1981. For purposes of the preceding sentence, the term "session of a State's legislature" includes any regular, special, budget, or other session of a State legislature.

* * * * * * *

P.L. 97-123, Approved December 29, 1981 (95 Stat. 1659)

[Amendments to P.L. 97-35]

. . . . . .

SEC. 2. * * *

(j) * * *

(2) [42 U.S.C. 415 note] Except as provided in paragraphs (3) and (4), the amendments made by section 2201 of the Omnibus Budget Reconciliation Act of 1981[1] (other than subsection (f) thereof), together with the amendments made by the preceding subsections of this section, shall apply with respect to benefits for months after December 1981; and the amendment made by subsection (f) of such section 2201 shall apply with respect to deaths occurring after December 1981.

(3) [None assigned.] Such amendments shall not apply—

(A) in the case of an old-age insurance benefit, if the individual who is entitled to such benefit first became eligible (as defined in section 215(a)(3)(B) of the Social Security Act) for such benefit before January 1982,

(B) in the case of a disability insurance benefit, if the individual who is entitled to such benefit first became eligible (as so defined) for such benefit before January 1982, or attained age sixty-two before January 1982,

(C) in the case of a wife's or husband's insurance benefit, or a child's insurance benefit based on the wages and self-employment income of a living individual, if the individual on whose wages and self-employment income such benefit is based is entitled to an old-age or disability insurance benefit with respect to which such amendments do not apply, or

(D) in the case of a survivors insurance benefit, if the individual on whose wages and self-employment income such benefit is based died before January 1982, or dies in or after January 1982 and at the time of his death is eligible (as so defined) for an old-age or disability insurance benefit with respect to which such amendments do not apply.

(4) [None assigned.] In the case of an individual who is a member of a religious order (within the meaning of section 3121(r)(2) of the Internal Revenue Code of 1954), or an autonomous subdivision of such order, whose members are required to take a vow of poverty, and which order or subdivision elected coverage under title II of the Social Security Act before the date of the enactment of this Act, or who would be such a member except that such individual is considered retired because of old age or total disability, paragraphs (2) and (3) shall apply, except that each reference therein to "December 1981" or "January 1982" shall be considered a reference to "December 1991" or "January 1992", respectively.

. . . . . .

SEC. 3. * * *

(g) [26 U.S.C. 3121 note] (1) Except as provided in paragraph (2), this section (and the amendments made by this section) shall apply to remuneration paid after December 31, 1981.

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[1] P.L. 97-35.

(2) This section (and the amendments made by this section) shall not apply with respect to any payment made by a third party to an employee pursuant to a contractual relationship of an employer with such third party entered into before December 14, 1981, if—

(A) coverage by such third party for the group in which such employee falls ceases before March 1, 1982, and

(B) no payment by such third party is made to such employee under such relationship after February 28, 1982.

. . . . . .

P.L. 97-248, Approved September 3, 1982 (96 Stat. 324)

"Tax Equity and Fiscal Responsibility Act of 1982"

. . . . . .

SEC. 103. * * *

(b) [42 U.S.C. 1395x note] The amendment made by subsection (a) shall be effective with respect to cost reporting periods ending after September 30, 1982, but in the case of any cost reporting period beginning before October 1, 1982, any reduction in payments under title XVIII of the Social Security Act to a hospital or skilled nursing facility resulting from such amendment shall be imposed only in proportion to the part of the period which occurs after September 30, 1982.

. . . . . .

SEC. 109. * * *

(c)(1) [42 U.S.C. 1395xx note] The amendments made by this section shall become effective on the date of the enactment of this Act, except that section 1887(b)(1) of the Social Security Act shall not apply before October 1, 1982, to services furnished by a physician and described in section 1887(a)(1)(B) of such Act.

(2) [None assigned.] In the case of a contract with a provider of services entered into prior to the date of the enactment of this Act, the amendment made by subsection (a) shall apply to payments under such contract (A) 30 days after the first date (after such date of enactment) the provider of services may unilaterally terminate the contract, or (B) one year after the date of the enactment of this Act, whichever is earlier.

(3) [42 U.S.C. 1395x note] The amendment made by subsection (b)(1) shall not apply to contracts entered into before the date of the enactment of this Act.

. . . . . .

SEC. 114. * * *

(c) [42 U.S.C. 1395mm note] (1) Subject to paragraph (2), the amendment made by subsection (a) shall apply with respect to

services furnished on or after the initial effective date (as defined in paragraph (4)), except that such amendment shall not apply—

(A) with respect to services furnished by an eligible organization to any individual who is enrolled with that organization under an existing cost contract (as defined in paragraph (3)(A)) and entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act at the time the organization first enters into a new risk-sharing contract (as defined in paragraph (3)(D)) unless—

(i) the individual requests at any time that the amendment apply, or

(ii) the Secretary determines at any time that the amendment should apply to all members of the organization because of administrative costs or other administrative burdens involved and so informs in advance each affected member of the eligible organization;

(B) with respect to services furnished by an eligible organization during the five-year period beginning on the initial effective date, if—

(i) the organization has an existing risk-sharing contract (as defined in paragraph (3)(B)) on the initial effective date, or

(ii) on the date of the enactment of this Act the organization was furnishing services pursuant to an existing demonstration project (as defined in paragraph (3)(C)), such demonstration project is concluded before the initial effective date, and before such initial effective date the organization enters into an existing risk-sharing contract,

unless the organization requests that the amendment apply earlier; or

(C) with respect to services furnished by an eligible organization during the period of an existing demonstration project if on the initial effective date the organization was furnishing services pursuant to the project and if the project concludes after such date.

(2)(A) In the case of an eligible organization which has in effect an existing cost contract (as defined in paragraph (3)(A)) on the initial effective date, the organization may receive payment under a new risk-sharing contract with respect to a current, nonrisk medicare enrollee (as defined in subparagraph (C)) only to the extent that the organization enrolls, for each such enrollee, two new medicare enrollees (as defined in subparagraph (D)). The selection of those current nonrisk medicare enrollees with respect to whom payment may be so received under a new risk-sharing contract shall be made in a nonbiased manner.

(B) Subparagraph (A) shall not be construed to prevent an eligible organization from providing for enrollment, on a basis described in subsection (a)(6) of section 1876 of the Social Security Act (as amended by this Act, other than under a reasonable cost reimbursement contract), of current, nonrisk medicare enrollees and from providing such enrollees with some or all of the additional benefits described in section 1876(g)(2) of the Social Security Act (as amended by this Act), but (except as provided in subparagraph (A))—

(i) payment to the organization with respect to such enrollees shall only be made in accordance with the terms of a reasonable cost reimbursement contract, and

(ii) no payment may be made under section 1876 of such Act with respect to such enrollees for any such additional benefits.

Individuals enrolled with the organization under this subparagraph shall be considered to be individuals enrolled with the organization for the purpose of meeting the requirement of section 1876(g)(2) of the Social Security Act (as amended by this Act).

(C) For purposes of this paragraph, the term "current, nonrisk medicare enrollee" means, with respect to an organization, an individual who on the initial effective date—

(i) is enrolled with that organization under an existing cost contract, and

(ii) is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act.

(D) For purposes of this paragraph, the term "new medicare enrollee" means, with respect to an organization, an individual who—

(i) is enrolled with the organization after the date the organization first enters into a new risk-sharing contract,

(ii) at the time of such enrollment is entitled to benefits under part A, or enrolled in part B, of title XVIII of the Social Security Act, and

(iii) was not enrolled with the organization at the time the individual became entitled to benefits under part A, or to enroll in part B, of such title.

(3) For purposes of this subsection:

(A) The term "existing cost contract" means a contract which is entered into under section 1876 of the Social Security Act, as in effect before the initial effective date, or reimbursement on a reasonable cost basis under section 1833(a)(1)(A) of such Act, and which is not an existing risk-sharing contract or an existing demonstration project.

(B) The term "existing risk-sharing contract" means a contract entered into under section 1876(i)(2)(A) of the Social Security Act, as in effect before the initial effective date.

(C) The term "existing demonstration project" means a demonstration project under section 402(a) of the Social Security Amendments of 1967[1] or under section 222(a) of the Social Security Amendments of 1972[2], relating to the provision of services for which payment may be made under title XVIII of the Social Security Act.

(D) The term "new risk-sharing contract" means a contract entered into under section 1876(g) of the Social Security Act, as amended by this Act.

(E) The term "reasonable cost reimbursement contract" means a contract entered into under section 1833(a)(1) of the Social Security Act or under section 1876(h) of such Act, as amended by this Act.

(4) As used in this section, the term "initial effective date" means—

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[1]P.L. 90-248.
[2]P.L. 92-603.

(A) the first day of the thirteenth month which begins after the date of the enactment of this Act, or

(B) the first day of the first month after the month in which the Secretary of Health and Human Services notifies the Committee on Finance of the Senate and the Committees on Ways and Means and on Energy and Commerce of the House of Representatives that he is reasonably certain that the methodology to make appropriate adjustments (referred to in section 1876(a)(4) of the Social Security Act, as amended by this Act) has been developed and can be implemented to assure actuarial equivalence in the estimation of adjusted average per capita costs under that section,[1]

whichever is later.

* * * * * * *

SEC. 122. * * *

(h)(1) [42 U.S.C. 1395c note] (A) Subject to subparagraph (B), the amendments made by this section apply to hospice care provided on or after November 1, 1983, and before October 1, 1986.

(B) An individual who on October 1, 1986, has an election under section 1812(d)(1) of the Social Security Act in effect for a period, is entitled to hospice care benefits after that date during the remainder of that period and any consecutive period to which the individual would have been entitled before such date.

* * * * * * *

SEC. 128. * * *

(e) [42 U.S.C. 1395x note] (1) Any amendment to the Omnibus Budget Reconciliaton[2] Act of 1981[3] made by this section shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

(2) Except as otherwise provided in this section, any amendment to the Social Security Act or the Internal Revenue Code of 1954 made by this section (other than subsection (d)) shall be effective as if it had been originally included as a part of that provision of the Social Security Act or Internal Revenue Code of 1954 to which it relates, as such provision of such Act or Code was amended by the Omnibus Budget Reconciliaton[4] Act of 1981.

(3) The amendments made by subsection (d) shall take effect upon enactment.

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SEC. 131. * * *

(d)[5] [42 U.S.C. 1396o note] (1) Except as provided in paragraph (2), the amendments made by this section shall become effective on October 1, 1982.

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[1] As of March 15, 1984, these reports have not yet been sent to Congress.
[2] As in original.
[3] P.L. 97-35.
[4] As in original.
[5] P.L. 97-448, §309(a)(8), redesignated subsection (c) as subsection (d), effective as if it had been originally included in P.L. 97-248.

(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act which the Secretary of Health and Human Services determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act.

* * * * * * *

SEC. 137. * * *

(d) [42 U.S.C. 1396a note] (1) Except as otherwise provided in this section, any amendment to the Omnibus Budget Reconciliation Act of 1981[1] made by this section shall be effective as if it had been originally included in the provision of the Omnibus Budget Reconciliation Act of 1981 to which such amendment relates.

(2) Except as otherwise provided in this section, any amendment to the Social Security Act made by the preceding provisions of this section shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of the Social Security Act was amended by the Omnibus Budget Reconciliation Act of 1981.

* * * * * * *

SEC. 149. [42 U.S.C. 1320c note] The amendments made by this part shall, subject to section 150, be effective with respect to contracts entered into or renewed on or after the date of the enactment of this Act.

* * * * * * *

SEC. 150. [42 U.S.C. 1320c note] (a) The Secretary of Health and Human Services shall not terminate or fail to renew any agreement in effect with a professional standards review organization under part B of title XI of the Social Security Act on the earlier of the date of the enactment of this Act or September 30, 1982 until such time as he enters into a contract with a utilization and quality control peer review organization under such part, as amended by this subtitle, for the area served by such professional standards review organization. In complying with this subsection, the Secretary may renew any such agreement[2] with a professional standards review organization for a period of less than 12 months.

(b) The provisions of part B of title XI of the Social Security Act as in effect prior to the amendments made by this subtitle shall remain in effect with respect to agreements[3] with professional standards review organizations in effect on the earlier of the date of the enactment of this Act or September 30, 1982, until such time as such

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[1] P.L. 97-35.

[2] P.L. 97-448, §309(a)(9)(A), struck out "contract" and substituted "agreement", effective as if it had been originally included in P.L. 97-248.

[3] P.L. 97-448, §309(a)(9)(B), struck out "contracts" and substituted "agreements", effective as if it had been originally included in P.L. 97-248.

agreement[1] is terminated or is not renewed, in accordance with subsection (a). Any matters awaiting a determination by a Statewide Professional Standards Review Council on the date of the enactment of this Act shall be transferred to the Secretary of Health and Human Services for a determination unless such determination is made by such Council within 30 days after the date of the enactment of this Act. No payments shall be made under part B of title XI of the Social Security Act to Statewide Professional Standards Review Councils for services performed under section 1162 of such Act after the end of such 30-day period.

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SEC. 278. * * *
(c) * * *

(2) [42 U.S.C. 426 note] MEDICARE COVERAGE.—

(A) IN GENERAL.—The amendments made by subsection (b) are effective on and after January 1, 1983, and the amendments made by paragraph (2)[2] of that subsection apply to remuneration (for medicare qualified Federal employment) paid after December 31, 1982.

(B) TREATMENT OF CURRENT DISABILITIES.—For purposes of establishing entitlement to hospital insurance benefits under part A of title XVIII of the Social Security Act pursuant to the amendments made by subsection (b) or the provisions of subsection (d), no individual may be considered to be under a disability for any period before January 1, 1983.

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[1] P.L. 97-448, §309(a)(9)(A), struck out "contract" and substituted "agreement", effective as if it had been originally included in P.L. 97-248.

[2] P.L. 97-448, §309(a)(10), struck out "(3)" and substituted "(2)", effective as if it had been originally included in P.L. 97-248.

P.L. 97-448, Approved January 12, 1983 (96 Stat. 2365)

"Technical Corrections Act of 1982"

* * * * * * *

SEC. 309. * * *

(c)(1) [42 U.S.C. 426 note] Any amendment to the Tax Equity and Fiscal Responsibility Act of 1982[1] made by this section shall be effective as if it had been originally included in the provision of such Act to which such amendment relates.

(2) [42 U.S.C. 426-1 note] Any amendment to the Social Security Act made by this section shall be effective as if it had been originally included as a part of that provision of the Social Security Act to which it relates, as such provision of such Act was amended or added by the Tax Equity and Fiscal Responsibility Act of 1982[2].

* * * * * * *

P.L. 98-21, Approved April 20, 1983 (97 Stat. 65)

"Social Security Amendments of 1983"

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SEC. 102. * * *

(c) [26 U.S.C. 3121 note] The amendments made by the preceding provisions of this section shall be effective with respect to service performed after December 31, 1983 (but the provisions of sections 2 and 3 of Public Law 94-563 and section 312(c) of Public Law 95-216 shall continue in effect, to the extent applicable, as though such amendments had not been made).

* * * * * * *

SEC. 321. * * *

(f) [26 U.S.C. 406 note] (1)(A) The amendments made by this section (other than subsection (d)) shall apply to agreements entered into after the date of the enactment of this Act.

(B) At the election of any American employer, the amendments made by this section (other than subsection (d)) shall also apply to any agreement entered into on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may by regulations prescribe.

(2)(A) The amendments made by subsection (d) shall apply to plans established after the date of the enactment of this Act.

(B) At the election of any domestic parent corporation the amendments made by subsection (d) shall also apply to any plan established on or before the date of the enactment of this Act. Any such election shall be made at such time and in such manner as the Secretary may

[1] P.L. 97-248.
[2] P.L. 97-248.

by regulations prescribe.

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SEC. 324. * * *

(d) [26 U.S.C. 3121 note] (1) Except as otherwise provided in this subsection, the amendments made by this section shall apply to remuneration paid after December 31, 1983.

(2) Except as otherwise provided in this subsection, the amendments made by subsection (b) shall apply to remuneration paid after December 31, 1984.

(3) The amendments made by this section shall not apply to employer contributions made during 1984 and attributable to services performed during 1983 under a qualified cash or deferred arrangement (as defined in section 401(k) of the Internal Revenue Code of 1954) if, under the terms of such arrangement as in effect on March 24, 1983—

(A) the employee makes an election with respect to such contribution before January 1, 1984, and

(B) the employer identifies the amount of such contribution before January 1, 1984.

In the case of the amendments made by subsection (b), the preceding sentence shall be applied by substituting "1985" for "1984" each place it appears and by substituting "during 1984" for "during 1983".

(4) In the case of an agreement in existence on March 24, 1983, between a nonqualified deferred compensation plan (as defined in section 3121(v)(2)(C) of the Internal Revenue Code of 1954, as added by this section) and an individual—

(A) the amendments made by this section (other than subsection (b)) shall apply with respect to services performed by such individual after December 31, 1983, and

(B) the amendments made by subsection (b) shall apply with respect to services performed by such individual after December 31, 1984.

The preceding sentence shall not apply in the case of a plan to which section 457(a) of such Code applies.

* * * * * * *

SEC. 603. * * *

(b) [42 U.S.C. 1395b-1 note] (1) Except as provided in paragraph (2), the amendments made by this title shall not affect the authority of the Secretary to develop, carry out, or continue experiments and demonstration projects.

(2) The Secretary shall provide that, upon the request of a State which has a demonstration project, for payment of hospitals under title XVIII of the Social Security Act approved under section 402(a) of the Social Security Amendments of 1967[1] or section 222(a) of the Social Security Amendments of 1972[2], which (A) is in effect as of March 1, 1983, and (B) was entered into after August 1982 (or upon the request of another party to demonstration project agreement), the terms of the demonstration agreement shall be modified so that the demonstration project is not required to maintain the rate of

[1] P.L. 90-248.
[2] P.L. 92-603.

increase in medicare hospital costs in that State below the national rate of increase in medicare hospital costs.

. . . . . .

SEC. 606. * * *

(c) [42 U.S.C. 1395r note] The amendments made by this section shall apply to premiums for months beginning with January 1984, and for months after June 1983 and before January 1984—

(1) the monthly premiums under part A and under part B of title XVIII of the Social Security Act for individuals enrolled under each respective part shall be the monthly premium under that part for the month of June 1983, and

(2) the amount of the Government contributions under section 1844(a)(1) of such Act shall be computed on the basis of the actuarially adequate rate which would have been in effect under part B of title XVIII of such Act for such months without regard to the amendments made by this section, but using the amount of the premium in effect for the month of June 1983.

. . . . . .

SELECTED PROVISIONS OF THE INTERNAL REVENUE CODE OF 1954[1]

(P.L. 83-591, Approved August 16, 1954)

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Subtitle A—Income Taxes

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SEC. 1401. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1988	11.40
December 31, 1987	January 1, 1990	12.12
December 31, 1989		12.40.[1]

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there shall be imposed for each taxable year, on the self-employment income of every individual, a tax equal to the following percent of the amount of the self-employment income for such taxable year:

In the case of a taxable year		
Beginning after:	**And before:**	**Percent:**
December 31, 1983	January 1, 1985	2.60
December 31, 1984	January 1, 1986	2.70
December 31, 1985		2.90.[2]

(c) CREDIT AGAINST TAXES IMPOSED BY THIS SECTION.—

(1) IN GENERAL.—In the case of a taxable year beginning before 1990, there shall be allowed as a credit against the taxes imposed by this section for any taxable year an amount equal to the applicable percentage of the self-employment income of the individual for such taxable year.

(2) APPLICABLE PERCENTAGE.—For purposes of paragraph (1), the applicable percentage shall be determined in accordance with the following table:

In the case of taxable years beginning in:	**The applicable percentage is:**
1984	2.7
1985	2.3
1986, 1987, 1988, or 1989	2.0.[3]

(d) [4] RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social

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[1] P.L. 98-21, §124(a), amended subsection (a) in its entirety.
As in original. No punctuation included.
[2] P.L. 98-21, §124(a), amended subsection (b) in its entirety.
[3] P.L. 98-21, §124(b), added this subsection (c).
[4] P.L. 98-21, §124(b), redesignated subsection (c) as subsection (d).

Security Act with any foreign country, the self-employment income of an individual shall be exempt from the taxes imposed by this section to the extent that such self-employment income is subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 1402. DEFINITIONS.

(a) NET EARNINGS FROM SELF-EMPLOYMENT.—The term "net earnings from self-employment" means the gross income derived by an individual from any trade or business carried on by such individual, less the deductions allowed by this subtitle which are attributable to such trade or business, plus his distributive share (whether or not distributed) of income or loss described in section 702(a)(8) from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary income or loss—

(1) there shall be excluded rentals from real estate and from personal property leased with the real estate (including such rentals paid in crop shares) together with the deductions attributable thereto, unless such rentals are received in the course of a trade or business as a real estate dealer; except that the preceding provisions of this paragraph shall not apply to any income derived by the owner or tenant of land if (A) such income is derived under an arrangement, between the owner or tenant and another individual, which provides that such other individual shall produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land, and that there shall be material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) in the production or the management of the production of such agricultural or horticultural commodities, and (B) there is material participation by the owner or tenant (as determined without regard to any activities of an agent of such owner or tenant) with respect to any such agricultural or horticultural commodity;

(2) there shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

(3) there shall be excluded any gain or loss—

(A) which is considered as gain or loss from the sale or exchange of a capital asset,

(B) from the cutting of timber, or the disposal of timber, coal, or iron ore, if section 631 applies to such gain or loss, or

(C) from the sale, exchange, involuntary conversion, or other disposition of property if such property is neither—

(i) stock in trade or other property of a kind which would properly be includible in inventory if on hand at the close of the taxable year, nor

(ii) property held primarily for sale to customers in the ordinary course of the trade or business;

(4) the deduction for net operating losses provided in section 172 shall not be allowed;

(5) if—

(A) any of the income derived from a trade or business (other than a trade or business carried on by a partnership) is community income under community property laws applicable to such income, all of the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the husband unless the wife exercises substantially all of the management and control of such trade or business, in which case all of such gross income and deductions shall be treated as the gross income and deductions of the wife; and

(B) any portion of a partner's distributive share of the ordinary income or loss from a trade or business carried on by a partnership is community income or loss under the community property laws applicable to such share, all of such distributive share shall be included in computing the net earnings from self-employment of such partner, and no part of such share shall be taken into account in computing the net earnings from self-employment of the spouse of such partner;

(6) a resident of Puerto Rico shall compute his net earnings from self-employment in the same manner as a citizen of the United States but without regard to section 933;

(7) the deduction for personal exemptions provided in section 151 shall not be allowed;

(8) an individual who is a duly ordained, commissioned, or licensed minister of a church or a member of a religious order shall compute his net earnings from self-employment derived from the performance of service described in subsection (c)(4) without regard to section 107 (relating to rental value of parsonages), section 119 (relating to meals and lodging furnished for the convenience of the employer), section 911 (relating to citizens or residents of the United States living abroad[1]) and section 931 (relating to income from sources within possessions of the United States);

(9) the term "possession of the United States" as used in sections 931 (relating to income from sources within possessions of the United States) and 932 (relating to citizens of possessions of the United States) shall be deemed not to include the Virgin Islands, Guam, or American Samoa;

(10) there shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

[1]P.L. 97-34, §111(b)(3), struck out "income earned by employees in certain camps" and substituted "citizens or residents of the United States living abroad".

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(11) [1] the exclusion from gross income provided by section 911(a)(1) shall not apply;[2]

(12) in lieu of the deduction provided by section 164(f) (relating to deduction for one-half of self-employment taxes), there shall be allowed a deduction equal to the product of—

(A) the taxpayer's net earnings from self-employment for the taxable year (determined without regard to this paragraph), and

(B) one-half of the sum of the rates imposed by subsections (a) and (b) of section 1401 for such year; and[3]

(13) [4] there shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based on the ordinary income or loss of the partnership for any taxable year of the partnership ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 3121(g)—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

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[1] P.L. 98-21, §323(b)(1), struck out "in the case of an individual described in section 911(d)(1)(B),".
[2] P.L. 97-34, §111(b)(5), amended paragraph (11) in its entirety.
[3] P.L. 98-21, §124(c)(2), inserted this paragraph (12).
[4] P.L. 98-21, §124(c)(2), redesignated paragraph (12) as paragraph (13).

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is not more than $2,400, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(8) derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in section 702(a)(8) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraphs (1) through (7) and paragraph (9) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (h), or by a partnership of which an individual is a member on a regular basis as defined in subsection (h), but only if such individual's net earnings from self-employment as determined without regard to this sentence in the taxable year are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a

taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such years exceed $1,600.

(b) SELF-EMPLOYMENT INCOME.—The term "self-employment income" means the net earnings from self-employment derived by an individual (other than a nonresident alien individual, except as provided by an agreement under section 233 of the Social Security Act[1]) during any taxable year; except that such term shall not include—

(1) that part of the net earnings from self-employment which is in excess of (i) an amount equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) which is effective for the calendar year in which such taxable year begins, minus (ii) the amount of the wages paid to such individual during such taxable years; or

(2) the net earnings from self-employment, if such net earnings for the taxable year are less than $400.

For purposes of clause (1), the term "wages" (A) includes such remuneration paid to an employee for services included under an agreement entered into pursuant to the provisions of section 218 of the Social Security Act (relating to coverage of State employees), or under an agreement entered into pursuant to the provisions of section 3121(l) (relating to coverage of citizens of the United States who are employees of foreign affiliates of American employers[2]), as would be wages under section 3121(a) if such services constituted employment under section 3121(b), (B) includes compensation which is subject to the tax imposed by section 3201 or 3211, and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)[3]. An individual who is not a citizen of the United States but who is a resident of the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa shall not, for purposes of this chapter be considered to be a nonresident alien individual.

(c) TRADE OR BUSINESS.—The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 162 (relating to trade or business expenses), except that such term shall not include—

(1) the performance of the functions of a public office, other than the functions of a public office of a State or a political subdivision thereof with respect to fees received in any period in which the functions are performed in a position compensated solely on a fee basis and in which such functions are not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act;

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[1]P.L. 98-21, §322(b)(2), inserted ", except as provided by an agreement under section 233 of the Social Security Act".

[2]P.L. 98-21, §321(e)(3), struck out "subsidiaries of domestic corporations" and substituted "affiliates of American employers".

[3]P.L. 97-248, §278(a)(2), inserted ", and (C) includes, but only with respect to the tax imposed by section 1401(b), remuneration paid for medicare qualified Federal employment (as defined in section 3121(u)(2)) which is subject to the taxes imposed by sections 3101(b) and 3111(b)".

(2) the performance of service by an individual as an employee, other than—

(A) service described in section 3121(b)(14)(B) performed by an individual who has attained the age of 18,

(B) service described in section 3121(b)(16),

(C) service described in section 3121(b)(11), (12), or (15) performed in the United States (as defined in section 3121(e)(2)) by a citizen of the United States,

(D) service described in paragraph (4) of this subsection,

(E) service performed by an individual as an employee of a State or a political subdivision thereof in a position compensated solely on a fee basis with respect to fees received in any period in which such service is not covered under an agreement entered into by such State and the Secretary of Health, Education, and Welfare pursuant to section 218 of the Social Security Act, and

(F) service described in section 3121(b)(20);

(3) the performance of service by an individual as an employee or employee representative as defined in section 3231;

(4) the performance of service by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(5) the performance of service by an individual in the exercise of his profession as a Christian Science practitioner; or

(6) the performance of service by an individual during the period for which an exemption under subsection (g) is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption under subsection (e) is effective with respect to him.

(d) EMPLOYEE AND WAGES.—The term "employee" and the term "wages" shall have the same meaning as when used in chapter 21 (sec. 3101 and following, relating to Federal Insurance Contributions Act).

(e) MINISTERS, MEMBERS OF RELIGIOUS ORDERS, AND CHRISTIAN SCIENCE PRACTITIONERS.—

(1) EXEMPTION.—Any individual who is (A) a duly ordained, commissioned, or licensed minister of a church or a member of a religious order (other than a member of a religious order who has taken a vow of poverty as a member of such order) or (B) a Christian Science practitioner, upon filing an application (in such form and manner, and with such official, as may be prescribed by regulations made under this chapter) together with a statement that either he is conscientiously opposed to, or because of religious principles he is opposed to, the acceptance (with respect to services performed by him as such minister, member, or practitioner) of any public insurance which makes payments in the event of death, disability, old age, or retirement or makes payments toward the cost of, or provides services for, medical care (including the benefits of any insurance system established by the Social Security Act), shall receive an exemp-

tion from the tax imposed by this chapter with respect to services performed by him as such minister, member, or practitioner. Notwithstanding the preceding sentence, an exemption may not be granted to an individual under this subsection if he had filed an effective waiver certificate under this section as it was in effect before its amendment in 1967.

(2) TIME FOR FILING APPLICATION.—Any individual who desires to file an application pursuant to paragraph (1) must file such application on or before whichever of the following dates is later: (A) the due date of the return (including any extension thereof) for the second taxable year for which he has net earnings from self-employment (computed without regard to subsection (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5); or (B) the due date of the return (including any extension thereof) for his second taxable year ending after 1967.

(3) EFFECTIVE DATE OF EXEMPTION.—An exemption received by an individual pursuant to this subsection shall be effective for the first taxable year for which he has net earnings from self-employment (computed without regard to subsections (c)(4) and (c)(5)) of $400 or more, any part of which was derived from the performance of service described in subsection (c)(4) or (c)(5), and for all succeeding taxable years. An exemption received pursuant to this subsection shall be irrevocable.

(f) PARTNER'S TAXABLE YEAR ENDING AS THE RESULT OF DEATH.—In computing a partner's net earnings from self-employment for his taxable year which ends as a result of his death (but only if such taxable year ends within, and not with, the taxable year of the partnership), there shall be included so much of the deceased partner's distributive share of the partnership's ordinary income or loss for the partnership taxable year as is not attributable to an interest in the partnership during any period beginning on or after the first day of the first calendar month following the month in which such partner died. For purposes of this subsection—

(1) in determining the portion of the distributive share which is attributable to any period specified in the preceding sentence, the ordinary income or loss of the partnership shall be treated as having been realized or sustained ratably over the partnership taxable year; and

(2) the term "deceased partner's distributive share" includes the share of his estate or of any other person succeeding, by reason of his death, to rights with respect to his partnership interest.

(g) MEMBERS OF CERTAIN RELIGIOUS FAITHS.—

(1) EXEMPTION.—Any individual may file an application (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) for an exemption from the tax imposed by this chapter if he is a member of a recognized religious sect or division thereof and is an adherent of established tenets or teachings of such sect or division by reason of which he is conscientiously opposed to acceptance of the benefits of any private or public insurance which makes payments in the event of death, disability, old-age, or retirement or makes payments toward the cost of, or provides services for,

medical care (including the benefits of any insurance system established by the Social Security Act). Such exemption may be granted only if the application contains or is accompanied by—

(A) such evidence of such individual's membership in, and adherence to the tenets or teachings of, the sect or division thereof as the Secretary may require for purposes of determining such individual's compliance with the preceding sentence, and

(B) his waiver of all benefits and other payments under titles II and XVIII of the Social Security Act on the basis of his wages and self-employment income as well as all such benefits and other payments to him on the basis of the wages and self-employment income of any other person,

and only if the Secretary of Health, Education, and Welfare finds that—

(C) such sect or division thereof has the established tenets or teachings referred to in the preceding sentence,

(D) it is the practice, and has been for a period of time which he deems to be substantial, for members of such sect or division thereof to make provision for their dependent members which in his judgment is reasonable in view of their general level of living, and

(E) such sect or division thereof has been in existence at all times since December 31, 1950.

An exemption may not be granted to any individual if any benefit or other payment referred to in subparagraph (B) became payable (or, but for section 203 or 222(b) of the Social Security Act, would have become payable) at or before the time of the filing of such waiver.

(2) TIME FOR FILING APPLICATION.—For purposes of this subsection, an application must be filed on or before the time prescribed for filing the return (including any extension thereof) for the first taxable year for which the individual has self-employment income (determined without regard to this subsection or subsection (c)(6)), except that an application filed after such date but on or before the last day of the third calendar month following the calendar month in which the taxpayer is first notified in writing by the Secretary that a timely application for an exemption from the tax imposed by this chapter has not been filed by him shall be deemed to be filed timely.

(3) PERIOD FOR WHICH EXEMPTION EFFECTIVE.—An exemption granted to any individual pursuant to this subsection shall apply with respect to all taxable years beginning after December 31, 1950, except that such exemption shall not apply for any taxable year—

(A) beginning (i) before the taxable year in which such individual first met the requirements of the first sentence of paragraph (1), or (ii) before the time as of which the Secretary of Health, Education, and Welfare finds that the sect or division thereof of which such individual is a member met the requirements of subparagraphs (C) and (D), or

(B) ending (i) after the time such individual ceases to meet the requirements of the first sentence of paragraph (1), or (ii) after the time as of which the Secretary of Health, Educa-

tion, and Welfare finds that the sect or division thereof of which he is a member ceases to meet the requirements of subparagraph (C) or (D).

(4) APPLICATION BY FIDUCIARIES OR SURVIVORS.—In any case where an individual who has self-employment income dies before the expiration of the time prescribed by paragraph (2) for filing an application for exemption pursuant to this subsection, such an application may be filed with respect to such individual within such time by a fiduciary acting for such individual's estate or by such individual's survivor (within the meaning of section 205(c)(1)(C) of the Social Security Act).

(h) REGULAR BASIS.—An individual shall be deemed to be self-employed on a regular basis in a taxable year, or to be a member of a partnership on a regular basis in such year, if he had net earnings from self-employment, as defined in the first sentence of subsection (a), of not less than $400 in at least two of the three consecutive taxable years immediately preceding such taxable year from trades or businesses carried on by such individual or such partnership.

SEC. 1403. MISCELLANEOUS PROVISIONS.

(a) TITLE OF CHAPTER.—This chapter may be cited as the "Self-Employment Contributions Act of 1954".

(b) CROSS REFERENCES.—

(1) For provisions relating to returns, see section 6017.

(2) For provisions relating to collection of taxes in Virgin Islands, Guam, American Samoa, and Puerto Rico, see section 7651.

(3) For provisions relating to declarations of estimated tax on self-employment income, see section 6015.

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CHAPTER 3—WITHHOLDING OF TAX ON NONRESIDENT ALIENS AND FOREIGN CORPORATIONS AND TAX-FREE COVENANT BONDS

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SEC. 1441. WITHHOLDING OF TAX ON NONRESIDENT ALIENS.

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(g) CROSS REFERENCE.—

For provision treating one-half of social security benefits as subject to withholding under this section, see section 871(a)(3).[1]

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[1] P.L. 98-21, §121(c)(2), added subsection (g).

Subtitle C—Employment Taxes[1]

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CHAPTER 21—FEDERAL INSURANCE CONTRIBUTIONS ACT

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Subchapter A—Tax on Employees

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SEC. 3101. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.[2]

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages received during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages received during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages received during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages received during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages received during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages received after December 31, 1985, the rate shall be 1.45 percent.

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to

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[1] P.L. 97-248, §307(b)(1), inserted "and Collection of Income Tax at Source".
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(b)(1).

[2] P.L. 98-21, §123(a)(1), struck out paragraphs (1) through (7) and substituted the following:

"In cases of wages received during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.".

an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 3102. DEDUCTION OF TAX FROM WAGES.

(a) REQUIREMENT.—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. An employer who in any calendar quarter pays to an employee cash remuneration to which paragraph (7)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar quarter is less than $50; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (7)(C) or (10) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $100; and an employer who in any calendar year pays to an employee cash remuneration to which paragraph (8)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax from any such payment of remuneration, even though at the time of payment the total amount of such remuneration paid to the employee by the employer in the calendar year is less than $150 and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis; and an employer who is furnished by an employee a written statement of tips (received in a calendar month) pursuant to section 6053(a) to which paragraph (12)(B) of section 3121(a) is applicable may deduct an amount equivalent to such tax with respect to such tips from any wages of the employee (exclusive of tips) under his control, even though at the time such statement is furnished the total amount of the tips included in statements furnished to the employer as having been received by the employee in such calendar month in the course of his employment by such employer is less than $20.

(b) INDEMNIFICATION OF EMPLOYER.—Every employer required so to deduct the tax shall be liable for the payment of such tax, and shall be indemnified against the claims and demands of any person for the amount of any such payment made by such employer.

(c) SPECIAL RULE FOR TIPS.—

(1) In the case of tips which constitute wages, subsection (a) shall be applicable only to such tips as are included in a written statement furnished to the employer pursuant to section 6053(a), and only to the extent that collection can be made by the employer, at or after the time such statement is so furnished and before the close of the 10th day following the calendar month (or, if paragraph (3) applies, the 30th day following the year) in which the tips were deemed paid, by deducting the amount of the tax from such wages of the employee (excluding tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) as are under control of the employer.

(2) If the tax imposed by section 3101, with respect to tips which are included in written statements furnished in any month to the employer pursuant to section 6053(a), exceeds the wages of the employee (excluding tips) from which the employer is required to collect the tax under paragraph (1), the employee may furnish to the employer on or before the 10th day of the following month (or, if paragraph (3) applies, on or before the 30th day of the following year) an amount of money equal to the amount of the excess.

(3) The Secretary may, under regulations prescribed by him, authorize employers—

(A) to estimate the amount of tips that will be reported by the employee pursuant to section 6053(a) in any calendar year,

(B) to determine the amount to be deducted upon each payment of wages (exclusive of tips) during such year as if the tips so estimated constituted the actual tips so reported, and

(C) to deduct upon any payment of wages (other than tips, but including funds turned over by the employee to the employer pursuant to paragraph (2)) to such employee during such year (and within 30 days thereafter) such amount as may be necessary to adjust the amount actually deducted upon such wages of the employee during the year to the amount required to be deducted in respect of tips included in written statements furnished to the employer during the year.

(4) If the tax imposed by section 3101 with respect to tips which constitute wages exceeds the portion of such tax which can be collected by the employer from the wages of the employee pursuant to paragraph (1) or paragraph (3), such excess shall be paid by the employee.

Subchapter B—Tax on Employers

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SEC. 3111. RATE OF TAX.

(a) OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.[1]

(b) HOSPITAL INSURANCE.—In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a) and (t)) paid by him with respect to employment (as defined in section 3121(b))—

(1) with respect to wages paid during the calendar years 1974 through 1977, the rate shall be 0.90 percent;

(2) with respect to wages paid during the calendar year 1978, the rate shall be 1.00 percent;

(3) with respect to wages paid during the calendar years 1979 and 1980, the rate shall be 1.05 percent;

(4) with respect to wages paid during the calendar years 1981 through 1984, the rate shall be 1.30 percent;

(5) with respect to wages paid during the calendar year 1985, the rate shall be 1.35 percent; and

(6) with respect to wages paid after December 31, 1985, the rate shall be 1.45 percent.

(c) RELIEF FROM TAXES IN CASES COVERED BY CERTAIN INTERNATIONAL AGREEMENTS.—During any period in which there is in effect an agreement entered into pursuant to section 233 of the Social Security Act with any foreign country, wages received by or paid to an individual shall be exempt from the taxes imposed by this section to the extent that such wages are subject under such agreement to taxes or contributions for similar purposes under the social security system of such foreign country.

SEC. 3112. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3111 unless such other provision of law grants a specific exemption, by reference to section 3111 (or the corresponding section of prior law), from the tax imposed by such section.

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[1] P.L. 98-21, §123(a)(2), struck out paragraphs (1) through (7) and substituted the following:

"In cases of wages paid during:	The rate shall be:
1984, 1985, 1986, or 1987	5.7 percent
1988 or 1989	6.06 percent
1990 or thereafter	6.2 percent.".

SEC. 3121. DEFINITIONS.

(a) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) with respect to employment has been paid to an individual by an employer during the calendar year with respect to which such contribution and benefit base is effective, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to the contribution and benefit base (as determined under section 230 of the Social Security Act) to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A)[1] sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or[2]

(B)[3] medical or hospitalization expenses in connection with sickness or accident disability, or

(C)[4] death;

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[1] P.L. 98-21, §324(a)(3)(A), struck out subparagraph (A) and redesignated subparagraph (B) as subparagraph (A).

[2] P.L. 97-123, §3(b)(1), amended subparagraph (B) [now redesignated subparagraph (A)] in its entirety.

[3] P.L. 98-21, §324(a)(3)(A), redesignated subparagraph (C) as subparagraph (B).

[4] P.L. 98-21, §324(a)(3)(A), redesignated subparagraph (D) as subparagraph (C).

[(3) Stricken.[1]]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust,

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),

(D) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2)[2] for such payment,

(E) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),[3]

(F) under or to an exempt governmental deferred compensation plan (as defined in subsection (v)(3)), or[4]

(G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;[5]

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7)(A) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business or for domestic service in a private home of the employer;

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[1] P.L. 98-21, §324(a)(3)(B), struck out paragraph (3).
[2] P.L. 98-21, §328(a), struck out "section 219" and substituted "section 219(b)(2)".
[3] P.L. 98-21, §324(a)(2)(C), added subparagraph (E).
[4] P.L. 98-21, §324(a)(2)(C), added subparagraph (F).
[5] P.L. 98-21, §324(a)(2)(C), added subparagraph (G).

(B) cash remuneration paid by an employer in any calendar quarter to an employee for domestic service in a private home of the employer, if the cash remuneration paid in such quarter by the employer to the employee for such service is less than $50. As used in this subparagraph, the term "domestic service in a private home of the employer" does not include service described in subsection (g)(5);

(C) cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this subparagraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in subsection (g)(5);

(8)(A) remuneration paid in any medium other than cash for agricultural labor;

(B) cash remuneration paid by an employer in any calendar year to an employee for agricultural labor unless (i) the cash remuneration paid in such year by the employer to the employee for such labor is $150 or more, or (ii) the employee performs agricultural labor for the employer on 20 days or more during such year for cash remuneration computed on a time basis;

[(9) Stricken.[1]]

(10) remuneration paid by an employer in any calendar year to an employee for service described in subsection (d)(3)(C) (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

(11) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(12)(A) tips paid in any medium other than cash;

(B) cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is $20 or more;

(13) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or[2] (ii) retirement for disability, [(iii) Stricken.[3]] and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

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[1] P.L. 98-21, §324(a)(3)(B), struck out paragraph (9).

[2] P.L. 98-21, §324(a)(3)(C)(i), inserted "or".

[3] P.L. 98-21, §324(a)(3)(C)(ii), struck out "or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer,".

(14) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(15) any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 223(a) of the Social Security Act and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(16) remuneration paid by an organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100;

(17) any contribution, payment, or service provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(18) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129[1]; or

(19) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119.[2]

Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.[3] Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A)[4] of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.[5]

(b) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service, of whatever nature, performed[6] (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or

[1] P.L. 97-34, §124(e)(2)(A), inserted "or 129".
[2] P.L. 98-21, §327(a)(1), inserted paragraph (19).
[3] P.L. 98-21, §327(b)(1), inserted this sentence.
[4] P.L. 98-21, §324(a)(3)(D), struck out "subparagraph (B)" and substituted "subparagraph (A)".
[5] P.L. 97-123, §3(b)(2), added this sentence.
[6] P.L. 98-21, §322(a)(2)(A), struck out "either".

aircraft when outside the United States, or (B) outside the United States by a citizen or resident[1] of the United States as an employee for an American employer (as defined in subsection (h)), or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act[2]; except that such term shall not include—

(1) service performed by foreign agricultural workers (A) under contracts entered into in accordance with title V of the Agricultural Act of 1949, as amended (7 U.S.C. 1461-1468), or (B) lawfully admitted to the United States from the Bahamas, Jamaica, and the other British West Indies, or from any other foreign country or possession thereof, on a temporary basis to perform agricultural labor;

(2) domestic service performed in a local college club, or local chapter of a college fraternity or sorority, by a student who is enrolled and is regularly attending classes at a school, college, or university;

(3)(A) service performed by an individual in the employ of his spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(B) service not in the course of the employer's trade or business, or domestic service in a private home of the employer, performed by an individual in the employ of his son or daughter; except that the provisions of this subparagraph shall not be applicable to such domestic service if—

(i) the employer is a surviving spouse or a divorced individual and has not remarried, or has a spouse living in the home who has a mental or physical condition which results in such spouse's being incapable of caring for a son, daughter, stepson, or stepdaughter (referred to in clause (ii)) for at least 4 continuous weeks in the calendar quarter in which the service is rendered, and

(ii) a son, daughter, stepson, or stepdaughter of such employer is living in the home, and

(iii) the son, daughter, stepson, or stepdaughter (referred to in clause (ii)) has not attained age 18 or has a mental or physical condition which requires the personal care and supervision of an adult for at least 4 continuous weeks in the calendar quarter in which the service is rendered;

(4) service performed by an individual on or in connection with a vessel not an American vessel, or on or in connection with an aircraft not an American aircraft, if (A) the individual is employed on and in connection with such vessel or aircraft, when outside the United States and (B)(i) such individual is not a citizen of the United States or (ii) the employer is not an American employer;

(5) service performed in the employ of the United States or any instrumentality of the United States, if such service—

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[1] P.L. 98-21, §323(a)(1), inserted "or resident".

[2] P.L. 98-21, §322(a)(2)(B), inserted ", or (C) if it is service, regardless of where or by whom performed, which is designated as employment or recognized as equivalent to employment under an agreement entered into under section 233 of the Social Security Act".

(A) would be excluded from the term "employment" for purposes of this title if the provisions of paragraphs (5) and (6) of this subsection as in effect in January 1983 had remained in effect, and

(B) is performed by an individual who (i) has been continuously in the employ of the United States or an instrumentality thereof since December 31, 1983 (and for this purpose an individual who returns to the performance of such service after being separated therefrom following a previous period of such service shall nevertheless be considered upon such return as having been continuously in the employ of the United States or an instrumentality thereof, regardless of whether the period of such separation began before, on, or after December 31, 1983, if the period of such separation does not exceed 365 consecutive days), or (ii) is receiving an annuity from the Civil Service Retirement and Disability Fund, or benefits (for service as an employee) under another retirement system established by law of the United States for employees of the Federal Government (other than for members of the uniformed services);

except that this paragraph shall not apply with respect to—

(i) service performed as the President or Vice President of the United States,

(ii) service performed—

(I) in a position placed in the Executive Schedule under sections 5312 through 5317 of title 5, United States Code,

(II) as a noncareer appointee in the Senior Executive Service or a noncareer member of the Senior Foreign Service, or

(III) in a position to which the individual is appointed by the President (or his designee) or the Vice President under section 105(a)(1), 106(a)(1), or 107(a)(1) or (b)(1) of title 3, United States Code, if the maximum rate of basic pay for such position is at or above the rate for level V of the Executive Schedule,

(iii) service performed as the Chief Justice of the United States, an Associate Justice of the Supreme Court, a judge of a United States court of appeals, a judge of a United States district court (including the district court of a territory), a judge of the United States Claims Court, a judge of the United States Court of International Trade, a judge of the United States Tax Court, a United States magistrate, or a referee in bankruptcy or United States bankruptcy judge,

(iv) service performed as a Member, Delegate, or Resident Commissioner of or to the Congress, or

(v) any other service in the legislative branch of the Federal Government if such service is performed by an individual who, on December 31, 1983, is not subject to subchapter III of chapter 83 of title 5, United States Code;[1]

(6) service performed in the employ of the United States or any instrumentality of the United States if such service is performed—

[1]P.L. 98-21, §101(b)(1), amended paragraph (5) in its entirety.

(A) in a penal institution of the United States by an inmate thereof;

(B) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the Federal Government), other than as a medical or dental intern or a medical or dental resident in training; or

(C) by any individual as an employee serving on a temporary basis in case of fire, storm, earthquake, flood, or other similar emergency;[1]

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned thereby, except that this paragraph shall not apply in the case of—

(A) service which, under subsection (j), constitutes covered transportation service,

(B) service in the employ of the Government of Guam or the Government of American Samoa or any political subdivision thereof, or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, performed by an officer or employee thereof (including a member of the legislature of any such Government or political subdivision), and, for purposes of this title with respect to the taxes imposed by this chapter—

(i) any person whose service as such an officer or employee is not covered by a retirement system established by a law of the United States shall not, with respect to such service, be regarded as an employee of the United States or any agency or instrumentality thereof, and

(ii) the remuneration for service described in clause (i) (including fees paid to a public official) shall be deemed to have been paid by the Government of Guam or the Government of American Samoa or by a political subdivision thereof or an instrumentality of any one or more of the foregoing which is wholly owned thereby, whichever is appropriate,

(C) service performed in the employ of the District of Columbia or any instrumentality which is wholly owned thereby, if such service is not covered by a retirement system established by a law of the United States; except that the provisions of this subparagraph shall not be applicable to service performed—

(i) in a hospital or penal institution by a patient or inmate thereof;

(ii) by any individual as an employee included under section 5351(2) of title 5, United States Code (relating to certain interns, student nurses, and other student employees of hospitals of the District of Columbia Government), other than as a medical or dental intern or as a medical or dental resident in training;

[1] P.L. 98-21, §101(b)(1), amended paragraph (6) in its entirety.

(iii) by any individual as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood or other similar emergency; or

(iv) by a member of a board, committee, or council of the District of Columbia, paid on a per diem, meeting, or other fee basis; or

(D) service performed in the employ of the Government of Guam (or any instrumentality which is wholly owned by such Government) by an employee properly classified as a temporary or intermittent employee, if such service is not covered by a retirement system established by a law of Guam; except that (i) the provisions of this subparagraph shall not be applicable to services performed by an elected official or a member of the legislature or in a hospital or penal institution by a patient or inmate thereof, and (ii) for purposes of this subparagraph, clauses (i) and (ii) of subparagraph (B) shall apply;

(8)[1] service performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order, except that this paragraph[2] shall not apply to service performed by a member of such an order in the exercise of such duties, if an election of coverage under subsection (r) is in effect with respect to such order, or with respect to the autonomous subdivision thereof to which such member belongs;[3]

(9) service performed by an individual as an employee or employee representative as defined in section 3231;

(10) service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services performed in its employ by a student referred to in section 218(c)(5) of the Social Security Act are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 218 of such Act;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

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[1] P.L. 98-21, §102(b)(1)(A), struck out "(A)".
[2] P.L. 98-21, §102(b)(1)(B), struck out "subparagraph" and substituted "paragraph".
[3] P.L. 98-21, §102(b)(1)(C), struck out subparagraph (B).

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality and employees thereof exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law;

(14)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(15) service performed in the employ of an international organization;

(16) service performed by an individual under an arrangement with the owner or tenant of land pursuant to which—

(A) such individual undertakes to produce agricultural or horticultural commodities (including livestock, bees, poultry, and fur-bearing animals and wildlife) on such land,

(B) the agricultural or horticultural commodities produced by such individual, or the proceeds therefrom, are to be divided between such individual and such owner or tenant, and

(C) the amount of such individual's share depends on the amount of the agricultural or horticultural commodities produced;

(17) service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended, as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

(18) service performed in Guam by a resident of the Republic of the Philippines while in Guam on a temporary basis as a nonimmigrant alien admitted to Guam pursuant to section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii));

(19) service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section

101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or

(20) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of such boat pursuant to which—

(A) such individual does not receive any cash remuneration (other than as provided in subparagraph (B)),

(B) such individual receives a share of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of such catch, and

(C) the amount of such individual's share depends on the amount of the boat's (or the boats' in the case of a fishing operation involving more than one boat) catch of fish or other forms of aquatic animal life,

but only if the operating crew of such boat (or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat) is normally made up of fewer than 10 individuals.

(c) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (b)(9).

(d) EMPLOYEE.—For purposes of this chapter, the term "employee" means—

(1) any officer of a corporation; or

(2) any individual who, under the usual common law rules applicable in determining the employer-employee relationship, has the status of an employee; or

(3) any individual (other than an individual who is an employee under paragraph (1) or (2)) who performs services for remuneration for any person—

(A) as an agent-driver or commission-driver engaged in distributing meat products, vegetable products, fruit products, bakery products, beverages (other than milk), or laundry or dry-cleaning services, for his principal;

(B) as a full-time life insurance salesman;

(C) as a home worker performing work, according to specifications furnished by the person for whom the services are performed, on materials or goods furnished by such person which are required to be returned to such person or a person designated by him; or

(D) as a traveling or city salesman, other than as an agent-driver or commission-driver, engaged upon a full-time basis in the solicitation on behalf of, and the transmission to, his principal (except for side-line sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations;

if the contract of service contemplates that substantially all of such services are to be performed personally by such individual; except that an individual shall not be included in the term "employee" under the provisions of this paragraph if such individual has a substantial investment in facilities used in connection with the performance of such services (other than in facilities for transportation), or if the services are in the nature of a single transaction not part of a continuing relationship with the person for whom the services are performed.

(e) STATE, UNITED STATES, AND CITIZEN.—For purposes of this chapter—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

(2) UNITED STATES.—The term "United States" when used in a geographical sense includes the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa.

An individual who is a citizen of the Commonwealth of Puerto Rico (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(f) AMERICAN VESSEL AND AIRCRAFT.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(g) AGRICULTURAL LABOR.—For purposes of this chapter, the term "agricultural labor" includes all service performed—

(1) on a farm, in the employ of any person, in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural commodity in section 15(g) of the Agricultural Marketing Act, as amended (12 U.S.C. 1141j), or in connection with the ginning of cotton, or in connection with

the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4)(A) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator produced more than one-half of the commodity with respect to which such service is performed;

(B) in the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A), but only if such operators produced all of the commodity with respect to which such service is performed. For purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than 20 at any time during the calendar year in which such service is performed;

(C) the provisions of subparagraphs (A) and (B) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

As used in this subsection, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animal, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities, and orchards.

(h) AMERICAN EMPLOYER.—For purposes of this chapter, the term "American employer" means an employer which is—

(1) the United States or any instrumentality thereof,

(2) an individual who is a resident of the United States,

(3) a partnership, if two-thirds or more of the partners are residents of the United States,

(4) a trust, if all of the trustees are residents of the United States, or

(5) a corporation organized under the laws of the United States or of any State.

(i) COMPUTATION OF WAGES IN CERTAIN CASES.—

(1) DOMESTIC SERVICE.—For purposes of this chapter, in the case of domestic service described in subsection (a)(7)(B), any payment of cash remuneration for such service which is more or less than a whole-dollar amount shall, under such conditions and to such extent as may be prescribed by regulations made under this chapter, be computed to the nearest dollar. For the purpose of the computation to the nearest dollar, the payment of a fractional part of a dollar shall be disregarded unless it amounts to one-half dollar or more, in which case it shall be increased to $1. The amount of any payment of cash remuneration so

computed to the nearest dollar shall, in lieu of the amount actually paid, be deemed to constitute the amount of cash remuneration for purposes of subsection (a)(7)(B).

(2) SERVICE IN THE UNIFORMED SERVICES.—For purposes of this chapter, in the case of an individual performing service, as a member of a uniformed service, to which the provisions of subsection (m)(1) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only his basic pay as described in section 102(10) of the Servicemen's and Veterans' Survivor Benefits Act.

(3) PEACE CORPS VOLUNTEER SERVICE.—For purposes of this chapter, in the case of an individual performing service, as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include as such individual's remuneration for such service only amounts paid pursuant to section 5(c) or 6(1) of the Peace Corps Act.

(4) SERVICE PERFORMED BY CERTAIN MEMBERS OF RELIGIOUS ORDERS.—For purposes of this chapter, in any case where an individual is a member of a religious order (as defined in subsection (r)(2)) performing service in the exercise of duties required by such order, and an election of coverage under subsection (r) is in effect with respect to such order or with respect to the autonomous subdivision thereof to which such member belongs, the term "wages" shall, subject to the provisions of subsection (a)(1), include as such individual's remuneration for such service the fair market value of any board, lodging, clothing, and other perquisites furnished to such member by such order or subdivision thereof or by any other person or organization pursuant to an agreement with such order or subdivision, except that the amount included as such individual's remuneration under this paragraph shall not be less than $100 a month.

(5) SERVICE PERFORMED BY CERTAIN RETIRED JUSTICES AND JUDGES.—For purposes of this chapter, in the case of an individual performing service under the provisions of section 294 of title 28, United States Code (relating to assignment of retired justices and judges to active duty), the term "wages" shall, subject to the provisions of subsection (a)(1) of this section, include any payment under section 371(b) of such title 28 which is received during the period of such service.[1]

(j) COVERED TRANSPORTATION SERVICE.—For purposes of this chapter—

(1) EXISTING TRANSPORTATION SYSTEMS—GENERAL RULE.—Except as provided in paragraph (2), all service performed in the employ of a State or political subdivision in connection with its operation of a public transportation system shall constitute covered transportation service if any part of the transportation system was acquired from private ownership after 1936 and prior to 1951.

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[1]P.L. 98-21, §101(c)(2), added paragraph (5).

(2) EXISTING TRANSPORTATION SYSTEMS—CASES IN WHICH NO TRANSPORTATION EMPLOYEES, OR ONLY CERTAIN EMPLOYEES, ARE COVERED.—Service performed in the employ of a State or political subdivision in connection with the operation of its public transportation system shall not constitute covered transportation service if—

(A) any part of the transportation system was acquired from private ownership after 1936 and prior to 1951, and substantially all service in connection with the operation of the transportation system was, on December 31, 1950, covered under a general retirement system providing benefits which, by reason of a provision of the State constitution dealing specifically with retirement systems of the State or political subdivisions thereof, cannot be diminished or impaired; or

(B) no part of the transportation system operated by the State or political subdivision on December 31, 1950, was acquired from private ownership after 1936 and prior to 1951;

except that if such State or political subdivision makes an acquisition after 1950 from private ownership of any part of its transportation system, then, in the case of any employee who—

(C) became an employee of such State or political subdivision in connection with and at the time of its acquisition after 1950 of such part, and

(D) prior to such acquisition rendered service in employment (including as employment service covered by an agreement under section 218 of the Social Security Act) in connection with the operation of such part of the transportation system acquired by the State or political subdivision,

the service of such employee in connection with the operation of the transportation system shall constitute covered transportation service, commencing with the first day of the third calendar quarter following the calendar quarter in which the acquisition of such part took place, unless on such first day such service of such employee is covered by a general retirement system which does not, with respect to such employee, contain special provisions applicable only to employees described in subparagraph (C).

(3) TRANSPORTATION SYSTEMS ACQUIRED AFTER 1950.—All service performed in the employ of a State or political subdivision thereof in connection with its operation of a public transportation system shall constitute covered transportation service if the transportation system was not operated by the State or political subdivision prior to 1951 and, at the time of its first acquisition (after 1950) from private ownership of any part of its transportation system, the State or political subdivision did not have a general retirement system covering substantially all service performed in connection with the operation of the transportation system.

(4) DEFINITIONS.—For purposes of this subsection—

(A) The term "general retirement system" means any pension, annuity, retirement, or similar fund or system established by a State or by a political subdivision thereof for employees of the State, political subdivision, or both; but

such term shall not include such a fund or system which covers only service performed in positions connected with the operation of its public transportation system.

(B) A transportation system or a part thereof shall be considered to have been acquired by a State or political subdivision from private ownership if prior to the acquisition service performed by employees in connection with the operation of the system or part thereof acquired constituted employment under this chapter or subchapter A of chapter 9 of the Internal Revenue Code of 1939 or was covered by an agreement made pursuant to section 218 of the Social Security Act and some of such employees became employees of the State or political subdivision in connection with and at the time of such acquisition.

(C) The term "political subdivision" includes an instrumentality of—

(i) a State,

(ii) one or more political subdivisions of a State, or

(iii) a State and one or more of its political subdivisions.

[(k) Repealed.[1]]

(l) AGREEMENTS ENTERED INTO BY AMERICAN EMPLOYERS WITH RESPECT TO FOREIGN AFFILIATES.—

(1) AGREEMENT WITH RESPECT TO CERTAIN EMPLOYEES OF FOREIGN AFFILIATE.—The Secretary shall, at the American employer's request, enter into an agreement (in such manner and form as may be prescribed by the Secretary) with any American employer (as defined in subsection (h)) who desires to have the insurance system established by title II of the Social Security Act extended to service performed outside the United States in the employ of any 1 or more of such employer's foreign affiliates (as defined in paragraph (8)) by all employees who are citizens or residents of the United States, except that the agreement shall not apply to any service performed by, or remuneration paid to, an employee if such service or remuneration would be excluded from the term "employment" or "wages", as defined in this section, had the service been performed in the United States.[2] Such agreement shall be applicable with respect to citizens or residents[3] of the United States who, on or after the effective date of the agreement, are employees of and perform services outside the United States for any foreign affiliate[4] specified in the agreement. Such agreement shall provide—

(A) that the American employer[5] shall pay to the Secretary, at such time or times as the Secretary may by regulations prescribe, amounts equivalent to the sum of the taxes which would be imposed by sections 3101 and 3111 (including amounts equivalent to the interest, additions to the taxes, additional amounts, and penalties which would be applicable) with respect to the remuneration which would be

[1] P.L. 98-21, §102(b)(2), repealed subsection (k).

[2] P.L. 98-21, §321(a)(1), struck out so much of subsection (l) as precedes the second sentence of paragraph (1) and substituted the preceding.

[3] P.L. 98-21, §321(e)(1), inserted "or residents".

[4] P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".

[5] P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".

wages if the services covered by the agreement constituted employment as defined in this section; and

(B) that the American employer[1] will comply with such regulations relating to payments and reports as the Secretary may prescribe to carry out the purposes of this subsection.

(2) EFFECTIVE PERIOD OF AGREEMENT.—An agreement entered into pursuant to paragraph (1) shall be in effect for the period beginning with the first day of the calendar quarter in which such agreement is entered into or the first day of the succeeding calendar quarter, as may be specified in the agreement; except that in case such agreement is amended to include the services performed for any other affiliate[2] and such amendment is executed after the first month following the first calendar quarter for which the agreement is in effect, the agreement shall be in effect with respect to service performed for such other affiliate[3] only after the calendar quarter in which such amendment is executed.

(3) TERMINATION OF PERIOD BY AN American employer[4].—The period for which an agreement entered into pursuant to paragraph (1) of this subsection is effective may be terminated with respect to any one or more of its foreign affiliates[5] by the American employer[6], effective at the end of a calendar quarter, upon giving two years' advance notice in writing, but only if, at the time of the receipt of such notice, the agreement has been in effect for a period of not less than eight years. The notice of termination may be revoked by the American employer[7] by giving, prior to the close of the calendar quarter specified in the notice of termination, a written notice of such revocation. Notice of termination or revocation thereof shall be filed in such form and manner as may be prescribed by regulations. Notwithstanding any other provision of this subsection, the period for which any such agreement is effective with respect to any foreign entity[8] shall terminate at the end of any calendar quarter in which the foreign entity[9], at any time in such quarter, ceases to be a foreign affiliate[10] as defined in paragraph (8).

(4) TERMINATION OF PERIOD BY SECRETARY.—If the Secretary finds that any American employer[11] which entered into an agreement pursuant to this subsection has failed to comply substantially with the terms of such agreement, the Secretary shall give such American employer[12] not less than sixty days' advance notice in writing that the period covered by such agreement will terminate at the end of the calendar quarter specified in such notice. Such notice of termination may be

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[1]P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[2]P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".
[3]P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".
[4]P.L. 98-21, §321(e)(1), struck out "A DOMESTIC CORPORATION" and substituted "an American employer".
[5]P.L. 98-21, §321(e)(1), struck out "subsidiaries" and substituted "affiliates".
[6]P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[7]P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[8]P.L. 98-21, §321(e)(1), struck out "corporation" and substituted "entity".
[9]P.L. 98-21, §321(e)(1), struck out "corporation" and substituted "entity".
[10]P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".
[11]P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[12]P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".

revoked by the Secretary by giving, prior to the close of the calendar quarter specified in the notice of termination, written notice of such revocation to the American employer[1]. No notice of termination or of revocation thereof shall be given under this paragraph to an American employer[2] without the prior concurrence of the Secretary of Health, Education, and Welfare.

(5) NO RENEWAL OF AGREEMENT.—If any agreement entered into pursuant to paragraph (1) of this subsection is terminated in its entirety (A) by a notice of termination filed by the American employer[3] pursuant to paragraph (3), or (B) by a notice of termination given by the Secretary pursuant to paragraph (4), the American employer[4] may not again enter into an agreement pursuant to paragraph (1). If any such agreement is terminated with respect to any foreign affiliate[5], such agreement may not thereafter be amended so as again to make it applicable with respect to such affiliate[6].

(6) DEPOSITS IN TRUST FUNDS.—For purposes of section 201 of the Social Security Act, relating to appropriations to the Federal Old-Age and Survivors Insurance Trust Fund and the Federal Disability Insurance Trust Fund, such remuneration—

(A) paid for services covered by an agreement entered into pursuant to paragraph (1) as would be wages if the services constituted employment, and

(B) as is reported to the Secretary pursuant to the provisions of such agreement or of the regulations issued under this subsection,

shall be considered wages subject to the taxes imposed by this chapter.

(7) OVERPAYMENTS AND UNDERPAYMENTS.—

(A) If more or less than the correct amount due under an agreement entered into pursuant to this subsection is paid with respect to any payment of remuneration, proper adjustments with respect to the amounts due under such agreement shall be made, without interest, in such manner and at such times as may be required by regulations prescribed by the Secretary.

(B) If an overpayment cannot be adjusted under subparagraph (A), the amount thereof shall be paid by the Secretary, through the Fiscal Service of the Treasury Department, but only if a claim for such overpayment is filed with the Secretary within two years from the time such overpayment was made.

(8) FOREIGN AFFILIATE DEFINED.—For purposes of this subsection and section 210(a) of the Social Security Act—

(A) IN GENERAL.—A foreign affiliate of an American employer is any foreign entity in which such American employer has not less than a 10-percent interest.

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[1] P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[2] P.L. 98-21, §321(e)(1), struck out "a domestic corporation" and substituted "an American employer".
[3] P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[4] P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".
[5] P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".
[6] P.L. 98-21, §321(e)(1), struck out "subsidiary" and substituted "affiliate".

(B) DETERMINATION OF 10-PERCENT INTEREST.—For purposes of subparagraph (A), an American employer has a 10-percent interest in any entity if such employer has such an interest directly (or through one or more entities)—

(i) in the case of a corporation, in the voting stock thereof, and

(ii) in the case of any other entity, in the profits thereof.[1]

(9) AMERICAN EMPLOYER[2] AS SEPARATE ENTITY.—Each American employer[3] which enters into an agreement pursuant to paragraph (1) of this subsection shall, for purposes of this subsection and section 6413(c)(2)(C), relating to special refunds in the case of employees of certain foreign entities[4], be considered an employer in its capacity as a party to such agreement separate and distinct from its identity as a person employing individuals on its own account.

(10) REGULATIONS.—Regulations of the Secretary to carry out the purposes of this subsection shall be designed to make the requirements imposed on American employers[5] with respect to services covered by an agreement entered into pursuant to this subsection the same, so far as practicable, as those imposed upon employers pursuant to this title with respect to the taxes imposed by this chapter.

(m) SERVICE IN THE UNIFORMED SERVICES.—For purposes of this chapter—

(1) INCLUSION OF SERVICE.—The term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a member of a uniformed service on active duty; but such term shall not include any such service which is performed while on leave without pay.

(2) ACTIVE DUTY.—The term "active duty" means "active duty" as described in section 102 of the Servicemen's and Veterans' Survivor Benefits Act, except that it shall also include "active duty for training" as described in such section.

(3) INACTIVE DUTY TRAINING.—The term "inactive duty training" means "inactive duty training" as described in such section 102.

(n) MEMBER OF A UNIFORMED SERVICE.—For purposes of this chapter, the term "member of a uniformed service" means any person appointed, enlisted, or inducted in a component of the Army, Navy, Air Force, Marine Corps, or Coast Guard (including a reserve component of a uniformed service as defined in section 102(3) of the Servicemen's and Veterans' Survivor Benefits Act), or in one of those services without specification of component, or as a commissioned officer of the Coast and Geodetic Survey or the Regular or Reserve Corps of the Public Health Service, and any person serving in the Army or Air Force under call or conscription. The term includes—

(1) a retired member of any of those services;

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[1] P.L. 98-21, §321(a)(2), amended paragraph (8) in its entirety.

[2] P.L. 98-21, §321(e)(1), struck out "DOMESTIC CORPORATION" and substituted "AMERICAN EMPLOYER".

[3] P.L. 98-21, §321(e)(1), struck out "domestic corporation" and substituted "American employer".

[4] P.L. 98-21, §321(e)(1), struck out "corporations" and substituted "entities".

[5] P.L. 98-21, §321(e)(1), struck out "domestic corporations" and substituted "American employers".

(2) a member of the Fleet Reserve or Fleet Marine Corps Reserve;

(3) a cadet at the United States Military Academy, a midshipman at the United States Naval Academy, and a cadet at the United States Coast Guard Academy or United States Air Force Academy;

(4) a member of the Reserve Officers' Training Corps, the Naval Reserve Officers' Training Corps, or the Air Force Reserve Officers' Training Corps, when ordered to annual training duty for fourteen days or more, and while performing authorized travel to and from that duty; and

(5) any person while en route to or from, or at, a place for final acceptance or for entry upon active duty in the military or naval service—

(A) who has been provisionally accepted for such duty; or

(B) who, under the Universal Military Training and Service Act, has been selected for active military or naval service;

and has been ordered or directed to proceed to such place.

The term does not include a temporary member of the Coast Guard Reserve.

(o) CREW LEADER.—For purposes of this chapter, the term "crew leader" means an individual who furnishes individuals to perform agricultural labor for another person, if such individual pays (either on his own behalf or on behalf of such person) the individuals so furnished by him for the agricultural labor performed by them and if such individual has not entered into a written agreement with such person whereby such individual has been designated as an employee of such person; and such individuals furnished by the crew leader to perform agricultural labor for another person shall be deemed to be the employees of such crew leader. For purposes of this chapter and chapter 2, a crew leader shall, with respect to service performed in furnishing individuals to perform agricultural labor for another person and service performed as a member of the crew, be deemed not to be an employee of such other person.

(p) PEACE CORPS VOLUNTEER SERVICE.—For purposes of this chapter, the term "employment" shall, notwithstanding the provisions of subsection (b) of this section, include service performed by an individual as a volunteer or volunteer leader within the meaning of the Peace Corps Act.

(q) TIPS INCLUDED FOR EMPLOYEE TAXES.—For purposes of this chapter other than for purposes of the taxes imposed by section 3111, tips received by an employee in the course of his employment shall be considered remuneration for employment. Such remuneration shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received.

(r) ELECTION OF COVERAGE BY RELIGIOUS ORDERS.—

(1) CERTIFICATE OF ELECTION BY ORDER.—A religious order whose members are required to take a vow of poverty, or any autonomous subdivision of such order, may file a certificate (in such form and manner, and with such official, as may be prescribed by regulations under this chapter) electing to have

the insurance system established by title II of the Social Security Act extended to services performed by its members in the exercise of duties required by such order or such subdivision thereof. Such certificate of election shall provide that—

(A) such election of coverage by such order or subdivision shall be irrevocable;

(B) such election shall apply to all current and future members of such order, or in the case of a subdivision thereof to all current and future members of such order who belong to such subdivision;

(C) all services performed by a member of such an order or subdivision in the exercise of duties required by such order or subdivision shall be deemed to have been performed by such member as an employee of such order or subdivision; and

(D) the wages of each member, upon which such order or subdivision shall pay the taxes imposed by sections 3101 and 3111, will be determined as provided in subsection (i)(4).

(2) DEFINITION OF MEMBER.—For purposes of this subsection, a member of a religious order means any individual who is subject to a vow of poverty as a member of such order and who performs tasks usually required (and to the extent usually required) of an active member of such order and who is not considered retired because of old age or total disability.

(3) EFFECTIVE DATE FOR ELECTION.—(A) A certificate of election of coverage shall be in effect, for purposes of subsection (b)(8)[1] and for purposes of section 210(a)(8)[2] of the Social Security Act, for the period beginning with whichever of the following may be designated by the order or subdivision thereof:

(i) the first day of the calendar quarter in which the certificate is filed,

(ii) the first day of the calendar quarter succeeding such quarter, or

(iii) the first day of any calendar quarter preceding the calendar quarter in which the certificate is filed, except that such date may not be earlier than the first day of the twentieth calendar quarter preceding the quarter in which such certificate is filed.

Whenever a date is designated under clause (iii), the election shall apply to services performed before the quarter in which the certificate is filed only if the member performing such services was a member at the time such services were performed and is living on the first day of the quarter in which such certificate is filed.

(B) If a certificate of election filed pursuant to this subsection is effective for one or more calendar quarters prior to the quarter in which such certificate is filed, then—

(i) for purposes of computing interest and for purposes of section 6651 (relating to addition to tax for failure to file tax return), the due date for the return and payment of the tax for such prior calendar quarters resulting from the filing of such certificate shall be the last day of the calendar month

[1] P.L. 98-21, §102(b)(3)(A), struck out "subsection (b)(8)(A)" and substituted "subsection (b)(8)".
[2] P.L. 98-21, §102(b)(3)(A), struck out "section 210(a)(8)(A)" and substituted "section 210(a)(8)".

following the calendar quarter in which the certificate is filed; and

(ii) the statutory period for the assessment of such tax shall not expire before the expiration of 3 years from such due date.

[(4) Stricken.[1]]

(s) CONCURRENT EMPLOYMENT BY TWO OR MORE EMPLOYERS.--For purposes of sections 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.[2]

(t) SPECIAL RULE FOR DETERMINING WAGES SUBJECT TO EMPLOYER TAX IN CASE OF CERTAIN EMPLOYERS WHOSE EMPLOYEES RECEIVE INCOME FROM TIPS.—If the wages paid by an employer with respect to the employment during any month of an individual who (for services performed in connection with such employment) receives tips which constitute wages, and to which section 3102(a) applies, are less than the total amount which would be payable (with respect to such employment) at the minimum wage rate applicable to such individual under section 6(a)(1) of the Fair Labor Standards Act of 1938 (determined without regard to section 3(m) of such Act), the wages so paid shall be deemed for purposes of section 3111 to be equal to such total amount.

(u) APPLICATION OF HOSPITAL INSURANCE TAX TO FEDERAL EMPLOYMENT.—

(1) IN GENERAL.—For purposes of the taxes imposed by sections 3101(b) and 3111(b), subsection (b) shall be applied without regard to paragraph (5) thereof.[3]

(2) MEDICARE QUALIFIED FEDERAL EMPLOYMENT.—For purposes of this chapter, the term "medicare qualified Federal employment" means service which--

(A) is employment (as defined in subsection (b)) with the application of paragraph (1), but

(B) would not be employment (as so defined) without the application of paragraph (1).[4]

(v) TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS.—

(1) CERTAIN EMPLOYER CONTRIBUTIONS TREATED AS WAGES.—Nothing in any paragraph of subsection (a) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

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[1]P.L. 98-21, §102(b)(3)(B), struck out paragraph (4).

[2]See P.L. 98-21, "Social Security Amendments of 1983", §125, with respect to treatment of certain faculty practice plans.

[3]P.L. 98-21, §101(b)(2), amended paragraph (1) in its entirety.

[4]P.L. 97-248, §278(a)(1), added subsection (u).

(B) any amount treated as an employer contribution under section 414(h)(2).

(2) TREATMENT OF CERTAIN NONQUALIFIED DEFERRED COMPENSATION PLANS.—

(A) IN GENERAL.—Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forefeiture[1] of the rights to such amount.

(B) TAXED ONLY ONCE.—Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) NONQUALIFIED DEFERRED COMPENSATION PLAN.—For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (a)(5).

(3) EXEMPT GOVERNMENTAL DEFERRED COMPENSATION PLAN.—For purposes of subsection (a)(5), the term "exempt governmental deferred compensation plan" means any plan providing for deferral of compensation established and maintained for its employees by the United States, by a State or political subdivision thereof, or by an agency or instrumentality of any of the foregoing. Such term shall not include—

(A) any plan to which section 83, 402(b), 403(c), 457(a), or 457(e)(1) applies, and

(B) any annuity contract described in section 403(b).[2]

SEC. 3122. FEDERAL SERVICE.

In the case of the taxes imposed by this chapter with respect to service performed in the employ of the United States or in the employ of any instrumentality which is wholly owned by the United States, including service which is medicare qualified Federal employment (as defined in section 3121(u)(2)),[3] including service, performed as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, and including service, performed as a volunteer or volunteer leader within the meaning of the Peace Corps Act, to which the provisions of section 3121(p) are applicable, the determination whether an individual has performed service which constitutes employment as defined in section 3121(b), the determination of the amount of remuneration for such service which constitutes wages as defined in section 3121(a), and the return and payment of the taxes imposed by this chapter, shall be made by the head of the Federal agency or instrumentality having the control of such service, or by such agents as such head may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1), and he shall not be required to obtain

[1] As in original.
[2] P.L. 98-21, §324(a)(1), added subsection (v).
[3] P.L. 97-248, §278(a)(3), inserted "including service which is medicare qualified Federal employment (as defined in section 3121(u)(2))," .

a refund of the tax paid under section 3111 on that part of the remuneration not included in wages by reason of section 3121(a)(1). Payments of the tax imposed under section 3111 with respect to service, performed by an individual as a member of a uniformed service, to which the provisions of section 3121(m)(1) are applicable, shall be made from appropriations available for the pay of members of such uniformed service. The provisions of this section shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of this section the Secretary of Defense shall be deemed to be the head of such instrumentality. The provisions of this section shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of this section the Secretary of Transportation shall be deemed to be the head of such instrumentality.

SEC. 3123. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

SEC. 3124. ESTIMATE OF REVENUE REDUCTION.

The Secretary at intervals of not longer than 3 years shall estimate the reduction in the amount of taxes collected under this chapter by reason of the operation of section 3121(b)(9) and shall include such estimate in his annual report.

SEC. 3125. RETURNS IN THE CASE OF GOVERNMENTAL EMPLOYEES IN GUAM, AMERICAN SAMOA, AND THE DISTRICT OF COLUMBIA.

(a) GUAM.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of Guam or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of Guam or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(b) AMERICAN SAMOA.—The return and payment of the taxes imposed by this chapter on the income of individuals who are officers or employees of the Government of American Samoa or any political subdivision thereof or of any instrumentality of any one or more of the foregoing which is wholly owned thereby, and those imposed on such Government or political subdivision or instrumentality with respect to having such individuals in its employ, may be made by the Governor of American Samoa or by such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed under section 3111 with respect to the service of such individuals without regard to the contribution and benefit base limitation in section 3121(a)(1).

(c) DISTRICT OF COLUMBIA.—In the case of the taxes imposed by this chapter with respect to service performed in the employ of the District of Columbia or in the employ of any instrumentality which is wholly owned thereby, the return and payment of the taxes may be made by the Mayor of the District of Columbia or such agents as he may designate. The person making such return may, for convenience of administration, make payments of the tax imposed by section 3111 with respect to such service without regard to the contribution and benefit base limitation in section 3121(a)(1).

SEC. 3126. SHORT TITLE.

This chapter may be cited as the "Federal Insurance Contributions Act."

CHAPTER 22—RAILROAD RETIREMENT TAX ACT

. . . . . .

Subchapter A—Tax on Employees

Page
Sec. 3201. Rate of tax 840
Sec. 3202. Deduction of tax from compensation.

SEC. 3201. RATE OF TAX.

(a) TIER 1 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

In the case of compensation received during:	The rate shall be:
1985	7.05
1986 or 1987	7.15
1988 or 1989	7.51
1990 or thereafter	7.65.

(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee a tax equal to the following percentage of the compensation received during any calendar year by such employee for services rendered by such employee:

In the case of compensation received during:	The rate shall be:
1985	3.50
1986 or thereafter	4.25.

(c) CROSS REFERENCE.—

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).[1]

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Subchapter B—Tax on Employee Representatives

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Sec. 3211. Rate of tax 841
Sec. 3212. Determination of compensation.

SEC. 3211. RATE OF TAX.

(a) IMPOSITION OF TAXES.—

(1) TIER 1 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representative for services rendered by such employee representative:

In the case of compensation received during:	The rate shall be:
1985	14.10
1986 or 1987	14.30
1988 or 1989	15.02
1990 or thereafter	15.30.

(2) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on the income of each employee representative a tax equal to the following percentage of the compensation received during any calendar year by such employee representatives for services rendered by such employee representative:

In the case of compensation received during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75.

(3) CROSS REFERENCE.—

For application of different contribution bases with respect to the taxes imposed by paragraphs (1) and (2), see section 3231(e)(2).[2]

(b) In addition to other taxes, there is hereby imposed on the income of each employee representative a tax at a rate equal to the rate of excise tax imposed on every employer, provided for in section 3221(c), for each man-hour for which compensation is paid to him for services rendered as an employee representative.

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[1] P.L. 97-34, §741(a), amended §3201.
P.L. 98-76, §211(a), amended §3201.
P.L. 98-76, §221, amended §3201 in its entirety.
[2] P.L. 97-34, §741(b), amended subsection (a).
P.L. 98-76, §211(c), amended subsection (a).
P.L. 98-76, §223, amended subsection (a) in its entirety.

Subchapter C—Tax on Employers

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Sec. 3221. Rate of tax 842

SEC. 3221. RATE OF TAX.

(a) TIER 1 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

In the case of compensation paid during:	The rate shall be:
1985	7.05
1986 or 1987	7.15
1988 or 1989	7.51
1990 or thereafter	7.65.[1]

(b) TIER 2 TAX.—In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentage of compensation paid during any calendar year by such employer for services rendered to such employer:

In the case of compensation paid during:	The rate shall be:
1985	13.75
1986 or thereafter	14.75[2]

* * * * * * *

(e) CROSS REFERENCE.—

For application of different contribution bases with respect to the taxes imposed by subsections (a) and (b), see section 3231(e)(2).[3]

Subchapter D—General Provisions

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Sec. 3231. Definitions 842
Sec. 3232. Court jurisdiction.
Sec. 3233. Short title.

SEC. 3231. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter, the term "employer" means any carrier (as defined in subsection (g)), and any company which is directly or indirectly owned or controlled by one or more such carriers or under common control therewith, and which operates any equipment or facility or performs any service (except trucking service, casual service, and the casual operation of equip-

[1] P.L. 97-34, §741(c), amended subsection (a).
P.L. 98-76, §211(b), amended subsection (a).
P.L. 98-76, §222(a), amended subsection (a) in its entirety.

[2] P.L. 98-76, §222(a), amended subsection (b) in its entirety.
Period omitted.

[3] P.L. 98-76, §222(b), added subsection (e).

ment or facilities) in connection with the transportation of passengers or property by railroad, or the receipt, delivery, elevation, transfer in transit, refrigeration or icing, storage, or handling of property transported by railroad, and any receiver, trustee, or other individual or body, judicial or otherwise, when in the possession of the property or operating all or any part of the business of any such employer; except that the term "employer" shall not include any street, interurban, or suburban electric railway, unless such railway is operating as a part of a general steam-railroad system of transportation, but shall not exclude any part of the general steam-railroad system of transportation now or hereafter operated by any other motive power. The Interstate Commerce Commission is hereby authorized and directed upon request of the Secretary, or upon complaint of any party interested, to determine after hearing whether any line operated by electric power falls within the terms of this exception. The term "employer" shall also include railroad associations, traffic associations, tariff bureaus, demurrage bureaus, weighing and inspection bureaus, collection agencies and other associations, bureaus, agencies, or organizations controlled and maintained wholly or principally by two or more employers as hereinbefore defined and engaged in the performance of services in connection with or incidental to railroad transportation; and railway labor organizations, national in scope, which have been or may be organized in accordance with the provisions of the Railway Labor Act, as amended (45 U.S.C., chapter 8), and their State and National legislative committees and their general committees and their insurance departments and their local lodges and divisions, established pursuant to the constitutions and bylaws of such organizations. The term "employer" shall not include any company by reason of its being engaged in the mining of coal, the supplying of coal to an employer where delivery is not beyond the mine tipple, and the operation of equipment or facilities therefor, or in any of such activities.

(b) EMPLOYEE.—For purposes of this chapter, the term "employee" means any individual in the service of one or more employers for compensation; except that the term "employee" shall include an employee of a local lodge or division defined as an employer in subsection (a) only if he was in the service of or in the employment relation to a carrier on or after August 29, 1935. An individual shall be deemed to have been in the employment relation to a carrier on August 29, 1935, if—

(1) he was on that date on leave of absence from his employment, expressly granted to him by the carrier by whom he was employed, or by a duly authorized representative of such carrier, and the grant of such leave of absence was established to the satisfaction of the Railroad Retirement Board before July 1947; or

(2) he was in the service of a carrier after August 29, 1935, and before January 1946 in each of 6 calendar months, whether or not consecutive; or

(3) before August 29, 1935, he did not retire and was not retired or discharged from the service of the last carrier by whom he was employed or its corporate or operating successor, but—

(A) solely by reason of his physical or mental disability he ceased before August 29, 1935, to be in the service of such carrier and thereafter remained continuously disabled until he attained age 65 or until August 1945, or

(B) solely for such last stated reason a carrier by whom he was employed before August 29, 1935, or a carrier who is its successor did not on or after August 29, 1935, and before August 1945 call him to return to service, or

(C) if he was so called he was solely for such reason unable to render service in 6 calendar months as provided in paragraph (2); or

(4) he was on August 29, 1935, absent from the service of a carrier by reason of a discharge which, within 1 year after the effective date thereof, was protested, to an appropriate labor representative or to the carrier, as wrongful, and which was followed within 10 years of the effective date thereof by his reinstatement in good faith to his former service with all his seniority rights;

except that an individual shall not be deemed to have been on August 29, 1935, in the employment relation to a carrier if before that date he was granted a pension or gratuity on the basis of which a pension was awarded to him pursuant to section 6 of the Railroad Retirement Act of 1937 (45 U.S.C. 228f), or if during the last payroll period before August 29, 1935, in which he rendered service to a carrier he was not in the service of an employer, in accordance with subsection (d), with respect to any service in such payroll period, or if he could have been in the employment relation to an employer only by reason of his having been, either before or after August 29, 1935, in the service of a local lodge or division defined as an employer in subsection (a). The term "employee" includes an officer of an employer. The term "employee" shall not include any individual while such individual is engaged in the physical operations consisting of the mining of coal, the preparation of coal, the handling (other than movement by rail with standard railroad locomotives) of coal not beyond the mine tipple, or the loading of coal at the tipple.

(c) EMPLOYEE REPRESENTATIVE.—For purposes of this chapter, the term "employee representative" means any officer or official representative of a railway labor organization other than a labor organization included in the term "employer" as defined in subsection (a), who before or after June 29, 1937, was in the service of an employer as defined in subsection (a) and who is duly authorized and designated to represent employees in accordance with the Railway Labor Act (45 U.S.C., chapter 8), as amended, and any individual who is regularly assigned to or regularly employed by such officer or official representative in connection with the duties of his office.

(d) SERVICE.—For purposes of this chapter, an individual is in the service of an employer whether his service is rendered within or without the United States, if—

(1) he is subject to the continuing authority of the employer to supervise and direct the manner of rendition of his service, or he is rendering professional or technical services and is integrated into the staff of the employer, or he is rendering, on the property used in the employer's operations, other personal services the rendition of which is integrated into the employer's operations, and

(2) he renders such service for compensation;

except that an individual shall be deemed to be in the service of an employer, other than a local lodge or division or a general committee of a railway-labor-organization employer, not conducting the principal part of its business in the United States, only when he is rendering service to it in the United States; and an individual shall be deemed to be in the service of such a local lodge or division only if—

(3) all, or substantially all, the individuals constituting its membership are employees of an employer conducting the principal part of its business in the United States; or

(4) the headquarters of such local lodge or division is located in the United States;

and an individual shall be deemed to be in the service of such a general committee only if—

(5) he is representing a local lodge or division described in paragraph (3) or (4) immediately above; or

(6) all, or substantially all, the individuals represented by it are employees of an employer conducting the principal part of its business in the United States; or

(7) he acts in the capacity of a general chairman or an assistant general chairman of a general committee which represents individuals rendering service in the United States to an employer, but in such case if his office or headquarters is not located in the United States and the individuals represented by such general committee are employees of an employer not conducting the principal part of its business in the United States, only such proportion of the remuneration for such service shall be regarded as compensation as the proportion which the mileage in the United States under the jurisdiction of such general committee bears to the total mileage under its jurisdiction, unless such mileage formula is inapplicable, in which case such other formula as the Railroad Retirement Board may have prescribed pursuant to section 1(c) of the Railroad Retirement Act of 1937 (45 U.S.C. 228a) shall be applicable, and if the application of such mileage formula, or such other formula as the Board may prescribe, would result in the compensation of the individual being less than 10 percent of his remuneration for such service, no part of such remuneration shall be regarded as compensation;

Provided however, That an individual not a citizen or resident of the United States shall not be deemed to be in the service of an employer when rendering service outside the United States to an employer who is required under the laws applicable in the place where the service is rendered to employ therein, in whole or in part, citizens or residents thereof; and the laws applicable on August 29, 1935, in the place where the service is rendered shall be deemed to have been applicable there at all times prior to that date.

(e) COMPENSATION.—For purposes of this chapter—

(1) The term "compensation" means any form of money remuneration paid to an individual for services rendered as an employee to one or more employers. Such term does not include (i) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide

for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of sickness or accident disability or medical or hospitalization expenses in connection with sickness or accident disability, (ii) tips (except as is provided under paragraph (3)), or (iii)[1] an amount paid specifically—either as an advance, as reimbursement or allowance—for traveling or other bona fide and necessary expenses incurred or reasonably expected to be incurred in the business of the employer provided any such payment is identified by the employer either by a separate payment or by specifically indicating the separate amounts where both wages and expense reimbursement or allowance are combined in a single payment. Such term does not include remuneration for service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section 101(a)(15) of the Immigration and Nationality Act, as amended, and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be.[2] For the purpose of determining the amount of taxes under sections 3201 and 3221, compensation earned in the service of a local lodge or division of a railway-labor-organization employer shall be disregarded with respect to any calendar month if the amount thereof is less than $25. Compensation for service as a delegate to a national or international convention of a railway labor organization defined as an "employer" in subsection (a) of this section shall be disregarded for purposes of determining the amount of taxes due pursuant to this chapter if the individual rendering such service has not previously rendered service, other than as such a delegate, which may be included in his "years of service" for purposes of the Railroad Retirement Act.

(2) APPLICATION OF CONTRIBUTION BASES.—

(A) COMPENSATION IN EXCESS OF APPLICABLE BASE EXCLUDED.—

(i) IN GENERAL.—The term "compensation" does not include that part of remuneration paid during any calendar year to an individual by an employer after remuneration equal to the applicable base has been paid during such calendar year to such individual by such employer for services rendered as an employee to such employer.

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[1]P.L. 97-34, §741(d)(2), struck out "(iii) the voluntary payment by an employer, without deduction from the remuneration of the employee, of the tax imposed on such employee by section 3201, or (iv)" and substituted "or (iii)".

[2]P.L. 98-76, §225(a)(3), struck out "Compensation which is paid in one calendar month but which would be payable in a prior or subsequent taxable month but for the fact that prescribed date of payment would fall on a Saturday, Sunday or legal holiday shall be deemed to have been paid in such prior or subsequent taxable month." Compensation which is earned during the period for which the Secretary shall require a return of taxes under this chapter to be made and which is payable during the calendar month following such period shall be deemed to have been paid during such period only."

[3]P.L. 97-34, §743(a), added the preceding sentence.

(ii) REMUNERATION NOT TREATED AS COMPENSATION EXCLUDED.—There shall not be taken into account under clause (i) remuneration which (without regard to clause (i)) is not treated as compensation under this subsection.

(B) APPLICABLE BASE.—

(i) TIER 1 TAXES.—Except as provided in clause (ii), the term "applicable base" means for any calendar year the contribution and benefit base determined under section 230 of the Social Security Act for such calendar year.

(ii) TIER 2 TAXES, ETC.—For purposes of—

(I) the taxes imposed by sections 3201(b), 3211(a)(2), and 3221(b), and

(II) computing average monthly compensation under section 3(j) of the Railroad Retirement Act of 1974 (except with respect to annuity amounts determined under subsection (a) or (f)(3) of section 3 of such Act),

clause (2) of the first sentence, and the second sentence, of subsection (c) of section 230 of the Social Security Act shall be disregarded.

(C) SUCCESSOR EMPLOYERS.—For purposes of this paragraph, the second sentence of section 3121(a)(1) (relating to successor employers) shall apply, except that—

(i) the term "services" shall be substituted for "employment" each place it appears,

(ii) the term "compensation" shall be substituted for "remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection)" each place it appears, and

(iii) the terms "employer", "services", and "compensation" shall have the meanings given such terms by this section.[1]

(3) Solely for purposes of the taxes[2] imposed by section 3201 and other provisions of this chapter insofar as they relate to such taxes[3], the term "compensation" also includes cash tips received by an employee in any calendar month in the course of his employment by an employer unless the amount of such cash tips is less than $20.

(4)(A) For purposes of applying sections 3201(a), 3211(a)(1), and 3221(a)[4], in the case of payments made to an employee or any of his dependents on account of sickness or accident disability, clause (i) of the second sentence of paragraph (1) shall exclude from the term "compensation" only—

(i) payments which are received under a workmen's compensation law, and

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[1]P.L. 97-34, §743(b) and (c), amended paragraph (2).
P.L. 98-76, §225(a)(1), amended paragraph (2) in its entirety.
[2]P.L. 98-76, §225(c)(1)(C), struck out "tax" and substituted "taxes".
[3]P.L. 98-76, §225(c)(6), struck out "tax" and substituted "taxes".
[4]P.L. 98-76, §225(c)(7), struck out "3201(b) and 3221(b) (and so much of section 3211(a) as relates to the rates of the taxes imposed by sections 3101 and 3111)" and substituted "3201(a), 3211(a)(1), and 3221(a)".

(ii) benefits received under the Railroad Retirement Act of 1974.

(B) Notwithstanding any other provision of law, for purposes of the sections specified in subparagraph (A), the term "compensation" shall include benefits paid under section 2(a) of the Railroad Unemployment Insurance Act for days of sickness, except to the extent that such sickness (as determined in accordance with standards prescribed by the Railroad Retirement Board) is the result of on-the-job injury.

(C) Under regulations prescribed by the Secretary, subparagraphs (A) and (B) shall not apply to payments made after the expiration of a 6-month period comparable to the 6-month period described in section 3121(a)(4).

(D) Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in compensation solely by reason of subparagraph (A) or (B) shall be treated for purposes of this chapter as the employer with respect to such compensation.[1]

(f) COMPANY.—For purposes of this chapter, the term "company" includes corporations, associations, and joint-stock companies.

(g) CARRIER.—For purposes of this chapter, the term "carrier" means an express carrier, sleeping car carrier, or rail carrier providing transportation subject to subchapter I of chapter 105 of title 49.

(h) TIPS CONSTITUTING COMPENSATION, TIME DEEMED PAID.—For purposes of this chapter, tips which constitute compensation for purposes of the taxes imposed by[2] section 3201 shall be deemed to be paid at the time a written statement including such tips is furnished to the employer pursuant to section 6053(a) or (if no statement including such tips is so furnished) at the time received[3].

(i) CONCURRENT EMPLOYMENT BY 2 OR MORE EMPLOYERS.—For purposes of this chapter, if 2 or more related corporations which are employers concurrently employ the same individual and compensate such individual through a common paymaster which is 1 of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.[4]

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CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT

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[1] P.L. 97-123, §3(c), added paragraph (4).

[2] P.L. 98-76, §225(c)(8)(A), struck out "tax imposed under" and substituted "taxes imposed by".

[3] P.L. 98-76, §225(c)(8)(B), struck out "; and tips so deemed to be paid in any month shall be deemed paid for services rendered in such month".

[4] P.L. 98-76, §225(b), added subsection (i).

CHAPTER 23—FEDERAL UNEMPLOYMENT TAX ACT (Cont.)

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SEC. 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for each calendar year an excise tax, with respect to having individuals in his employ, equal to—

(1) 6.2[1] percent, in the case of a calendar year beginning before the first calendar year after 1976, as of January 1 of which there is not a balance of repayable advances made to the extended unemployed[2] compensation account (established by section 905(a) of the Social Security Act); or

(2) 6.0[3] percent, in the case of such first calendar year and each calendar year thereafter;

of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

SEC. 3302. CREDITS AGAINST TAX.

(a) CONTRIBUTIONS TO STATE UNEMPLOYMENT FUNDS.—

(1) The taxpayer may, to the extent provided in this subsection and subsection (c), credit against the tax imposed by section 3301 the amount of contributions paid by him into an unemployment fund maintained during the taxable year under the unemployment compensation law of a State which is certified as provided in section 3304 for the 12-month period ending on October 31 of such year.

(2) The credit shall be permitted against the tax for the taxable year only for the amount of contributions paid with respect to such taxable year.

(3) The credit against the tax for any taxable year shall be permitted only for contributions paid on or before the last day upon which the taxpayer is required under section 6071 to file a return for such year; except that credit shall be permitted for contributions paid after such last day, but such credit shall not exceed 90 percent of the amount which would have been allowable as credit on account of such contributions had they been paid on or before such last day.

(4) Upon the payment of contributions into the unemployment fund of a State which are required under the unemployment compensation law of that State with respect to remuneration on the basis of which, prior to such payment into the proper fund, the taxpayer erroneously paid an amount as contributions under another unemployment compensation law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made at the time of the erroneous payment. If, by reason of such other law, the taxpayer was

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[1] P.L. 97-248, §271(b)(1), struck out "3.4" and substituted "3.5".
P.L. 97-248, §271(c)(1)(A), struck out "3.5" and substituted "6.2".
[2] As in original. Probably should be "unemployment".
[3] P.L. 97-248, §271(c)(1)(B), struck out "3.2" and substituted "6.0".

entitled to cease paying contributions with respect to services subject to such other law, the payment into the proper fund shall, for purposes of credit against the tax, be deemed to have been made on the date the return for the taxable year was filed under section 6071.

(5) In the case of wages paid by the trustee of an estate under title 11 of the United States Code, if the failure to pay contributions on time was without fault by the trustee, paragraph (3) shall be applied by substituting "100 percent" for "90 percent".

(b) ADDITIONAL CREDIT.—In addition to the credit allowed under subsection (a), a taxpayer may credit against the tax imposed by section 3301 for any taxable year an amount, with respect to the unemployment compensation law of each State certified as provided in section 3303 for the 12-month period ending on October 31 of such year, or with respect to any provisions thereof so certified, equal to the amount, if any, by which the contributions required to be paid by him with respect to the taxable year were less than the contributions such taxpayer would have been required to pay if throughout the taxable year he had been subject under such State law to the highest rate applied thereunder in such 12-month period to any person having individuals in his employ, or to a rate of 5.4%[1], whichever rate is lower.

(c) LIMIT ON TOTAL CREDITS.—

(1) The total credits allowed to a taxpayer under this section shall not exceed 90 percent of the tax against which such credits are allowable.

(2) If an advance or advances have been made to the unemployment account of a State under title XII of the Social Security Act, then the total credits (after applying subsections (a) and (b) and paragraph (1) of this subsection) otherwise allowable under this section for the taxable year in the case of a taxpayer subject to the unemployment compensation law of such State shall be reduced—

(A)(i) in the case of a taxable year beginning with the second consecutive January 1 as of the beginning of which there is a balance of such advances, by 5[2] percent of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State; and

(ii) in the case of any succeeding taxable year beginning with a consecutive January 1 as of the beginning of which there is a balance of such advances, by an additional 5[3] percent, for each such succeeding taxable year, of the tax imposed by section 3301 with respect to the wages paid by such taxpayer during such taxable year which are attributable to such State;

(B) in the case of a taxable year beginning with the third or fourth consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer

[1] P.L. 97-248, §271(c)(2)(A), struck out "2.7%" and substituted "5.4%". Executed as if P.L. 97-248, §271(c)(2)(A) strikes out "2.7 percent" instead of "2.7%".
[2] P.L. 97-248, §271(c)(3)(A), struck out "10" and substituted "5".
[3] P.L. 97-248, §271(c)(3)(A), struck out "10" and substituted "5".

during such taxable year which are attributable to such State by the percentage (if any), multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination[1] of which is the wage base under this chapter,[2] by which—

(i) 2.7 multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made[3] percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year; and

(C) in the case of a taxable year beginning with the fifth or any succeeding consecutive January 1 as of the beginning of which there is a balance of such advances, by the amount determined by multiplying the wages paid by such taxpayer during such taxable year which are attributable to such State by the percentage (if any) by which—

(i) the 5-year benefit cost rate applicable to such State for such taxable year or (if higher) 2.7 percent, exceeds

(ii) the average employer contribution rate for such State for the calendar year preceding such taxable year.

The provisions of the preceding sentence shall not be applicable with respect to the taxable year beginning January 1, 1975, or any succeeding taxable year which begins before January 1, 1980; and, for purposes of such sentence, January 1, 1980, shall be deemed to be the first January 1 occurring after January 1, 1974, and consecutive taxable years in the period commencing January 1, 1980, shall be determined as if the taxable year which begins on January 1, 1980, were the taxable year immediately succeeding the taxable year which began on January 1, 1974. Subparagraph (C) shall not apply with respect to any taxable year to which it would otherwise apply (but subparagraph (B) shall apply to such taxable year) if the Secretary of Labor determines (on or before November 10 of such taxable year) that the State meets the requirements of subsection (f)(2)(B) for such taxable year.[4]

(3) If the Secretary of Labor determines that a State, or State agency, has not—

(A) entered into the agreement described in section 239 of the Trade Act of 1974, with the Secretary of Labor before July 15, 1975, or

(B) fulfilled its commitments under an agreement with the Secretary of Labor as described in section 239 of the Trade

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[1] As in original.

[2] P.L. 98-21, §513(c), inserted ", multiplied by a fraction, the numerator of which is the State's average annual wage in covered employment for the calendar year in which the determination is made and the determination of which is the wage base under this chapter,".

[3] P.L. 98-21, §513(b), inserted "multiplied by a fraction, the numerator of which is the wage base under this chapter and the denominator of which is the estimated United States average annual wage in covered employment for the calendar year in which the determination is to be made".

[4] P.L. 97-248, §273(a), added the preceding sentence.

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then, in the case of a taxpayer subject to the unemployment compensation law of such State, the total credits (after applying subsections (a) and (b) and paragraphs (1) and (2) of this section) otherwise allowable under this section for a year during which such State or agency does not enter into or fulfill such an agreement shall be reduced by 7½[1] percent of the tax imposed with respect to wages paid by such taxpayer during such year which are attributable to such State.

(d) DEFINITIONS AND SPECIAL RULES RELATING TO SUBSECTION (c).—

(1) RATE OF TAX DEEMED TO BE 6 percent[2].—In applying subsection (c), the tax imposed by section 3301 shall be computed at the rate of 6[3] percent in lieu of the rate provided by such section.

(2) WAGES ATTRIBUTABLE TO A PARTICULAR STATE.—For purposes of subsection (c), wages shall be attributable to a particular State if they are subject to the unemployment compensation law of the State, or (if not subject to the unemployment compensation law of any State) if they are determined (under rules or regulations prescribed by the Secretary) to be attributable to such State.

(3) ADDITIONAL TAXES INAPPLICABLE WHERE ADVANCES ARE REPAID BEFORE NOVEMBER 10 of taxable year.—Paragraph (2) of subsection (c) shall not apply with respect to any State for the taxable year if (as of the beginning of November 10 of such year) there is no balance of advances referred to in such paragraph.

(4) AVERAGE EMPLOYER CONTRIBUTION RATE.—For purposes of subparagraphs (B) and (C) of subsection (c)(2), the average employer contribution rate for any State for any calendar year is that percentage obtained by dividing—

(A) the total of the contributions paid into the State unemployment fund with respect to such calendar year, by

(B)(i) for purposes of subparagraph (B) of subsection (c)(2), the total of the wages (as determined without any limitation on amount) attributable to such State subject to contributions under this chapter with respect to such calendar year, and

(ii) for purposes of subparagraph (C) of subsection (c)(2), the total of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year.[4]

For purposes of subparagraph (C) of subsection (c)(2), if the average employer contribution rate for any State for any calendar year (determined without regard to this sentence) equals or exceeds 2.7 percent, such rate shall be determined by increasing the amount taken into account under subparagraph (A) of the preceding sentence by the aggregate amount of employee payments (if any) into the unemployment fund of such State with respect to such calendar year which are to be used solely in the payment of unemployment compensation.

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[1] P.L. 97-248, §271(c)(3)(B), struck out "15" and substituted "7½".

[2] P.L. 97-248, §271(c)(2)(B), struck out "3 percent" and substituted "6 percent". Executed as if P.L. 97-248, §271(c)(2)(B), reads "3 PERCENT".

[3] P.L. 97-248, §271(c)(2)(B), struck out "3" and substituted "6".

[4] P.L. 98-21, §513(a), amended subparagraph (B) in its entirety.

(5) 5-YEAR BENEFIT COST RATE.—For purposes of subparagraph (C) of subsection (c)(2), the 5-year benefit cost rate applicable to any State for any taxable year is that percentage obtained by dividing—

(A) one-fifth of the total of the compensation paid under the State unemployment compensation law during the 5-year period ending at the close of the second calendar year preceding such taxable year, by

(B) the total of the remuneration subject to contributions under the State unemployment compensation law with respect to the first calendar year preceding such taxable year.

(6) ROUNDING.—If any percentage referred to in either subparagraph (B) or (C) of subsection (c)(2) is not a multiple of .1 percent, it shall be rounded to the nearest multiple of .1 percent.

(7) DETERMINATION AND CERTIFICATION OF PERCENTAGES.—The percentage referred to in subsection (c)(2)(B) or (C) for any taxable year for any State having a balance referred to therein shall be determined by the Secretary of Labor, and shall be certified by him to the Secretary of the Treasury before June 1 of such year, on the basis of a report furnished by such State to the Secretary of Labor before May 1 of such year. Any such State report shall be made as of the close of March 31 of the taxable year, and shall be made on such forms, and shall contain such information, as the Secretary of Labor deems necessary to the performance of his duties under this section.

(e) SUCCESSOR EMPLOYER.—Subject to the limits provided by subsection (c), if—

(1) an employer acquires during any calendar year substantially all the property used in the trade or business of another person, or used in a separate unit of a trade or business of such other person, and immediately after the acquisition employs in his trade or business one or more individuals who immediately prior to the acquisition were employed in the trade or business of such other person, and

(2) such other person is not an employer for the calendar year in which the acquisition takes place,

then, for the calendar year in which the acquisition takes place, in addition to the credits allowed under subsections (a) and (b), such employer may credit against the tax imposed by section 3301 for such year an amount equal to the credits which (without regard to subsection (c)) would have been allowable to such other person under subsections (a) and (b) and this subsection for such year, if such other person had been an employer, with respect to remuneration subject to contributions under the unemployment compensation law of a State paid by such other person to the individual or individuals described in paragraph (1).

(f) LIMITATION ON CREDIT REDUCTION.—

(1) LIMITATION.—In the case of any State which meets the requirements of paragraph (2) with respect to any taxable year[1] the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers subject to the unemployment compensation law of such State shall not exceed the greater of—

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[1] P.L. 98-21, §512(b), struck out "beginning before January 1, 1988,".

(A) the reduction which was in effect with respect to such State under subsection (c)(2) for the preceding taxable year, or

(B) 0.6 percent of the wages paid by the taxpayer during such taxable year which are attributable to such State.

(2) REQUIREMENTS.—The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines (on or before November 10 of such taxable year) that—

(A) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a reduction in such State's unemployment tax effort (as defined by the Secretary of Labor in regulations),

(B) no State action was taken during the 12-month period ending on September 30 of such taxable year (excluding any action required under State law as in effect prior to the date of the enactment of this subsection) which has resulted or will result in a net decrease in the solvency of the State unemployment compensation system (as defined by the Secretary of Labor in regulations),

(C) the State unemployment tax rate for the taxable year equals or exceeds the average benefit cost ratio for calendar years in the 5-calendar year period ending with the last calendar year before the taxable year, and

(D) the outstanding balance for such State of advances under title XII of the Social Security Act on September 30 of such taxable year was not greater than the outstanding balance for such State of such advances on September 30 of the third preceding taxable year (or, for purposes of applying this subparagraph to taxable year 1983, September 30, 1981).

The requirements of subparagraphs (C) and (D) shall not apply to taxable years 1981 and 1982.

(3) CREDIT REDUCTIONS FOR SUBSEQUENT YEARS.—If the credit reduction under subsection (c)(2) is limited by reason of paragraph (1) of this subsection for any taxable year, for purposes of applying subsection (c)(2) to subsequent taxable years (including years after 1987), the taxable year for which the credit reduction was so limited (and January 1 thereof) shall not be taken into account.

(4) STATE UNEMPLOYMENT TAX RATE.—For purposes of this subsection—

(A) IN GENERAL.—The State unemployment tax rate for any taxable year is the percentage obtained by dividing—

(i) the total amount of contributions paid into the State unemployment fund with respect to such taxable year, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such taxable year (determined without regard to any limitation on the amount of wages subject to contribution under the State law).

(B) TREATMENT OF ADDITIONAL TAX UNDER THIS CHAPTER.—

(i) TAXABLE YEAR 1983.—In the case of taxable year 1983, any additional tax imposed under this chapter

with respect to any State by reason of subsection (c)(2) shall be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(ii) TAXABLE YEAR 1984.—In the case of taxable year 1984, any additional tax imposed under this chapter with respect to any State by reason of subsection (c)(2) shall (to the extent such additional tax is attributable to a credit reduction in excess of 0.6 of wages attributable to such State) be treated as contributions paid into the State unemployment fund with respect to such taxable year.

(5) BENEFIT COST RATIO.—For purposes of this subsection—

(A) IN GENERAL.—The benefit cost ratio for any calendar year is the percentage determined by dividing—

(i) the sum of the total of the compensation paid under the State unemployment compensation law during such calendar year and any interest paid during such calendar year on advances made to the State under title XII of the Social Security Act, by

(ii) the total amount of the remuneration subject to contributions under the State unemployment compensation law with respect to such calendar year (determined without regard to any limitation on the amount of remuneration subject to contribution under the State law).

(B) REIMBURSABLE BENEFITS NOT TAKEN INTO ACCOUNT.—For purposes of subparagraph (A), compensation shall not be taken into account to the extent—

(i) the State is entitled to reimbursement for such compensation under the provisions of any Federal law, or

(ii) such compensation is attributable to services performed for a reimbursing employer.

(C) REIMBURSING EMPLOYER.—The term "reimbursing employer" means any governmental entity or other organization (or group of governmental entities or any other organizations) which makes reimbursements in lieu of contributions to the State unemployment fund.

(D) SPECIAL RULES FOR YEARS BEFORE 1985.—

(i) TAXABLE YEAR 1983.—For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1983, only regular compensation (as defined in section 205 of the Federal-State Extended Unemployment Compensation Act of 1970) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1982.

(ii) TAXABLE YEAR 1984.—For purposes of determining whether a State meets the requirements of paragraph (2)(C) for taxable year 1984, only regular compensation (as so defined) shall be taken into account for purposes of determining the benefit ratio for any preceding calendar year before 1981.

(E) ROUNDING.—If any percentage determined under subparagraph (A) is not a multiple of .1 percent, such percentage shall be reduced to the nearest multiple of .1 percent.

(6) REPORTS.—The Secretary of Labor may, by regulations, require a State to furnish such information at such time and in such manner as may be necessary for purposes of this subsection.

(7) DEFINITIONS AND SPECIAL RULES.—The definitions and special rules set forth in subsection (d) shall apply to this subsection in the same manner as they apply to subsection (c).[1]

(8) PARTIAL LIMITATION.—

(A) In the case of a State which would meet the requirements of this subsection for a taxable year prior to 1987 but for its failure to meet one of the requirements contained in subparagraph (C) or (D) of paragraph (2), the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be reduced by 0.1 percentage point.

(B) In the case of a State which does not meet the requirements of paragraph (2) but meets the requirements of subparagraphs (A) and (B) of paragraph (2) and which also meets the requirements of section 1202(b)(8)(B) of the Social Security Act with respect to such taxable year, the reduction under subsection (c)(2) in credits otherwise applicable to taxpayers in such State for such taxable year and each subsequent year (in a period of consecutive years for each of which a credit reduction is in effect for taxpayers in such State) shall be further reduced by an additional 0.1 percentage point.

(C) In no case shall the application of subparagraphs (A) and (B) reduce the credit reduction otherwise applicable under subsection (c)(2) below the limitation under paragraph (1).[2]

(g) CREDIT REDUCTION NOT TO APPLY WHEN STATE MAKES CERTAIN REPAYMENTS.—

(1) IN GENERAL.—In the case of any State which meets requirements of paragraph (2) with respect to any taxable year, subsection (c)(2) shall not apply to such taxable year; except that such taxable year (and January 1 of such taxable year) shall (except as provided in subsection (f)(3)) be taken into account for purposes of applying subsection (c)(2) to succeeding taxable years.

(2) REQUIREMENTS.—The requirements of this paragraph are met by any State with respect to any taxable year if the Secretary of Labor determines that—

(A) the repayments during the 1-year period ending on November 9 of such taxable year made by such State of advances under title XII of the Social Security Act are not less than the sum of—

(i) the potential additional taxes for such taxable year, and

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[1] P.L. 97-35, §2406(a), added subsection (f).
[2] P.L. 98-21, §512(a)(1), added paragraph (8).

(ii) any advances made to such State during such 1-year period under such title XII,

(B) there will be sufficient amounts in the State unemployment fund to pay all compensation during the 3-month period beginning on November 1 of such taxable year without receiving any advance under title XII of the Social Security Act, and

(C) there is a net increase in the solvency of the State unemployment compensation system for the taxable year attributable to changes made in the State law after the date on which the first advance taken into account in determining the amount of the potential additional taxes was made (or, if later, after the date of the enactment of this subsection) and such net increase equals or exceeds the potential additional taxes for such taxable year.

(3) DEFINITIONS.—For purposes of paragraph (2)—

(A) POTENTIAL ADDITIONAL TAXES.—The term "potential additional taxes" means, with respect to any State for any taxable year, the aggregate amount of the additional tax which would be payable under this chapter for such taxable year by all taxpayers subject to the unemployment compensation law of such State for such taxable year if paragraph (2) of subsection (c) had applied to such taxable year and any preceding taxable year without regard to this subsection but with regard to subsection (f).

(B) TREATMENT OF CERTAIN REDUCTIONS.—Any reduction in the State's balance under section 901(d)(1) of the Social Security Act shall not be treated as a repayment made by such State.

(4) REPORTS.—The Secretary of Labor may require a State to furnish such information at such time and in such manner as may be necessary for purposes of paragraph (2).[1]

SEC. 3303. CONDITIONS OF ADDITIONAL CREDIT ALLOWANCE.

(a) STATE STANDARDS.—A taxpayer shall be allowed an additional credit under section 3302(b) with respect to any reduced rate of contributions permitted by a State law, only if the Secretary of Labor finds that under such law—

(1) no reduced rate of contributions to a pooled fund or to a partially pooled account is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk during not less than the 3 consecutive years immediately preceding the computation date;

(2) no reduced rate of contributions to a guaranteed employment account is permitted to a person (or a group of persons) having individuals in his (or their) employ unless—

(A) the guaranty of remuneration was fulfilled in the year preceding the computation date; and

(B) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding the computation date by which contributions to such account were measured; and

[1] P.L. 97-248, §272(a), added subsection (g).

(C) such contributions were payable to such account with respect to 3 years preceding the computation date;

(3) no reduced rate of contributions to a reserve account is permitted to a person (or group of persons) having individuals in his (or their) employ unless—

(A) compensation has been payable from such account throughout the year preceding the computation date, and

(B) the balance of such account amounts to not less than five times the largest amount of compensation paid from such account within any 1 of the 3 years preceding such date, and

(C) the balance of such account amounts to not less than 2½ percent of that part of the payroll or payrolls for the 3 years preceding such date by which contributions to such account were measured, and

(D) such contributions were payable to such account with respect to the 3 years preceding the computation date.

For any person (or group of persons) who has (or have) not been subject to the State law for a period of time sufficient to compute the reduced rates permitted by paragraphs (1), (2), and (3) of this subsection on a 3-year basis (i) the period of time required may be reduced to the amount of time the person (or group of persons) has (or have) had experience under or has (or have) been subject to the State law, whichever is appropriate, but in no case less than 1 year immediately preceding the computation date, or (ii) a reduced rate (not less than 1 percent) may be permitted by the State law on a reasonable basis other than as permitted by paragraph (1), (2), or (3).

(b) CERTIFICATION BY THE SECRETARY OF LABOR WITH RESPECT TO ADDITIONAL CREDIT ALLOWANCE.—

(1) On October 31 of each calendar year, the Secretary of Labor shall certify to the Secretary of the Treasury the law of each State (certified by the Secretary of Labor as provided in section 3304 for the 12-month period ending on such October 31), with respect to which he finds that reduced rates of contributions were allowable with respect to such 12-month period only in accordance with the provisions of subsection (a).

(2) If the Secretary of Labor finds that under the law of a single State (certified by the Secretary of Labor as provided in section 3304) more than one type of fund or account is maintained, and reduced rates of contributions to more than one type of fund or account were allowable with respect to any 12-month period ending on October 31, and one or more of such reduced rates were allowable under conditions not fulfilling the requirements of subsection (a), the Secretary of Labor shall, on such October 31, certify to the Secretary of the Treasury only those provisions of the State law pursuant to which reduced rates of contributions were allowable with respect to such 12-month period under conditions fulfilling the requirements of subsection (a), and shall, in connection therewith, designate the kind of fund or account, as defined in subsection (c), established by the provisions so certified. If the Secretary of Labor finds that a part of any reduced rate of contributions payable under such law or under such provisions is required to be paid into one fund or account and a part into another fund or account, the Secretary

of Labor shall make such certification pursuant to this paragraph as he finds will assure the allowance of additional credits only with respect to that part of the reduced rate of contributions which is allowed under provisions which do fulfill the requirements of subsection (a).

(3) The Secretary of Labor shall, within 30 days after any State law is submitted to him for such purpose, certify to the State agency his findings with respect to reduced rates of contributions to a type of fund or account, as defined in subsection (c), which are allowable under such State law only in accordance with the provisions of subsection (a). After making such findings, the Secretary of Labor shall not withhold his certification to the Secretary of the Treasury of such State law, or of the provisions thereof with respect to which such findings were made, for any 12-month period ending on October 31 pursuant to paragraph (1) or (2) unless, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds the State law no longer contains the provisions specified in subsection (a) or the State has, with respect to such 12-month period, failed to comply substantially with any such provision.

(c) DEFINITIONS.—As used in this section—

(1) RESERVE ACCOUNT.—The term "reserve account" means a separate account in an unemployment fund, maintained with respect to a person (or group of persons) having individuals in his (or their) employ, from which account, unless such account is exhausted, is paid all and only compensation payable on the basis of services performed for such person (or for one or more of the persons comprising the group).

(2) POOLED FUND.—The term "pooled fund" means an unemployment fund or any part thereof (other than a reserve account or a guaranteed employment account) into which the total contributions of persons contributing thereto are payable, in which all contributions are mingled and undivided, and from which compensation is payable to all individuals eligible for compensation from such fund.

(3) PARTIALLY POOLED ACCOUNT.—The term "partially pooled account" means a part of an unemployment fund in which part of the fund all contributions thereto are mingled and undivided, and from which part of the fund compensation is payable only to individuals to whom compensation would be payable from a reserve account or from a guaranteed employment account but for the exhaustion or termination of such reserve account or of such guaranteed employment account. Payments from a reserve account or guaranteed employment account into a partially pooled account shall not be construed to be inconsistent with the provisions of paragraph (1) or (4).

(4) GUARANTEED EMPLOYMENT ACCOUNT.—The term "guaranteed employment account" means a separate account, in an unemployment fund maintained with respect to a person (or group of persons) having individuals in his (or their) employ who, in accordance with the provisions of the State law or of a plan thereunder approved by the State agency,

(A) guarantees in advance at least 30 hours of work, for which remuneration will be paid at not less than stated

rates, for each of 40 weeks (or if more, 1 weekly hour may be deducted for each added week guaranteed) in a year, to all the individuals who are in his (or their) employ in, and who continue to be available for suitable work in, one or more distinct establishments, except that any such individual's guaranty may commence after a probationary period (included within the 11 or less consecutive weeks immediately following the first week in which the individual renders services), and

(B) gives security or assurance, satisfactory to the State agency, for the fulfillment of such guaranties, from which account, unless such account is exhausted or terminated, is paid all and only compensation, payable on the basis of services performed for such person (or for one or more of the persons comprising the group), to any such individual whose guaranteed remuneration has not been paid (either pursuant to the guaranty or from the security or assurance provided for the fulfillment of the guaranty), or whose guaranty is not renewed and who is otherwise eligible for compensation under the State law.

(5) YEAR.—The term "year" means any 12 consecutive calendar months.

(6) BALANCE.—The term "balance", with respect to a reserve account or a guaranteed employment account, means the amount standing to the credit of the account as of the computation date; except that, if subsequent to January 1, 1940, any moneys have been paid into or credited to such account other than payments thereto by persons having individuals in their employ, such term shall mean the amount in such account as of the computation date less the total of such other moneys paid into or credited to such account subsequent to January 1, 1940.

(7) COMPUTATION DATE.—The term "computation date" means the date, occurring at least once in each calendar year and within 27 weeks prior to the effective date of new rates of contributions, as of which such rates are computed.

(8) REDUCED RATE.—The term "reduced rate" means a rate of contributions lower than the standard rate applicable under the State law, and the term "standard rate" means the rate on the basis of which variations therefrom are computed.

(d) VOLUNTARY CONTRIBUTIONS.—A State law may, without being deemed to violate the standards set forth in subsection (a), permit voluntary contributions to be used in the computation of reduced rates if such contributions are paid prior to the expiration of 120 days after the beginning of the year for which such rates are effective.

(e) PAYMENTS BY CERTAIN NONPROFIT ORGANIZATIONS.—A State may, without being deemed to violate the standards set forth in subsection (a), permit an organization (or a group of organizations) described in section 501(c)(3) which is exempt from income tax under section 501(a) to elect (in lieu of paying contributions) to pay into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to service performed in the employ of such organization (or group).

(f) TRANSITION.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies, a State law may provide that an organization (or group of organizations) which elects before April 1, 1972, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before January 1, 1969, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of wages paid by it or service performed in its employ, whichever is appropriate.[1]

(g) TRANSITIONAL RULE FOR UNEMPLOYMENT COMPENSATION AMENDMENTS OF 1976.—To facilitate the orderly transition to coverage of service to which section 3309(a)(1)(A) applies by reason of the enactment of the Unemployment Compensation Amendments of 1976, a State law may provide that an organization (or group of organizations) which elects, when such election first becomes available under the State law with respect to such service, to make payments (in lieu of contributions) into the State unemployment fund as provided in section 3309(a)(2), and which had paid contributions into such fund under the State law with respect to such service performed in its employ before the date of the enactment of this subsection, is not required to make any such payment (in lieu of contributions) on account of compensation paid after its election as heretofore described which is attributable under the State law to such service performed in its employ, until the total of such compensation equals the amount—

(1) by which the contributions paid by such organization (or group) on the basis of wages for such service with respect to a period before the election provided by section 3309(a)(2), exceed

(2) the unemployment compensation for the same period which was charged to the experience-rating account of such organization (or group) or paid under the State law on the basis of such service performed in its employ or wages paid for such service, whichever is appropriate.

SEC. 3304. APPROVAL OF STATE LAWS.[2]

(a) REQUIREMENTS.—The Secretary of Labor shall approve any State law submitted to him, within 30 days of such submission, which

[1] See P.L. 98-21, "Social Security Amendments of 1983", §524, with respect to the treatment of certain organizations retroactively determined to be described in §501(c)(3) of the Internal Revenue Code of 1954.

[2] See P.L. 93-567, "Emergency Jobs and Unemployment Assistance Act of 1974", §§201-223; P.L. 93-572, "Emergency Unemployment Compensation Act of 1974", §§102-105; and P.L. 94-566, "Unemployment Compensation Amendments of 1976", §§116, 121, and 411.

he finds provides that—

(1) all compensation is to be paid through public employment offices or such other agencies as the Secretary of Labor may approve;

(2) no compensation shall be payable with respect to any day of unemployment occurring within 2 years after the first day of the first period with respect to which contributions are required;

(3) all money received in the unemployment fund shall (except for refunds of sums erroneously paid into such fund and except for refunds paid in accordance with the provisions of section 3305(b)) immediately upon such receipt be paid over to the Secretary of the Treasury to the credit of the Unemployment Trust Fund established by section 904 of the Social Security Act (42 U.S.C. 1104);

(4) all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation, exclusive of expenses of administration, and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305(b); except that—

(A) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(B) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices; and

(C) nothing in this paragraph shall be construed to prohibit deducting an amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;[1]

(5) compensation shall not be denied in such State to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) if the position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) if the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) if as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization;

(6)(A) compensation is payable on the basis of service to which section 3309(a)(1) applies, in the same amount, on the same terms, and subject to the same conditions as compensation payable on the basis of other service subject to such law; except that—

[1]P.L. 98-21, §523(a), added subparagraph (C).

(i) with respect to services in an instructional, research, or principal administrative capacity for an educational institution to which section 3309(a)(1) applies, compensation shall not be payable based on such services for any week commencing during the period between two successive academic years or terms (or, when an agreement provides instead for a similar period between two regular but not successive terms, during such period) to any individual if such individual performs such services in the first of such academic years (or terms) and if there is a contract or reasonable assurance that such individual will perform services in any such capacity for any educational institution in the second of such academic years or terms,

(ii) with respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) compensation payable on the basis of such services shall[1] be denied to any individual for any week which commences during a period between 2 successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasonable assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) if compensation is denied to any individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I),[2]

(iii) with respect to any services described in clause (i) or (ii), compensation payable on the basis of such services shall[3] be denied to any individual for any week which commences during an established and customary vacation period or holiday recess if such individual performs such services in the period immediately before such vacation period or holiday recess, and there is a reasonable assurance that such individual will perform such services in the period immediately following such vacation period or holiday recess, and

(iv) with respect to any services described in clause (i) or (ii), compensation payable on the basis of services in any such capacity shall[4] be denied as specified in clauses (i), (ii), and (iii) to any individual who performed such services in an educational institution while in the employ of an educational service agency, and for this purpose the term "educational service agency" means a governmental agency or govern-

[1]P.L. 98-21, §521(a)(2), struck out "may" and substituted "shall".
[2]P.L. 97-248, §193(a), amended clause (ii) in its entirety.
[3]P.L. 98-21, §521(a)(2), struck out "may" and substituted "shall".
[4]P.L. 98-21, §521(a)(2), struck out "may" and substituted "shall".

mental entity which is established and operated exclusively for the purpose of providing such services to one or more educational institutions, and

(v) with respect to services to which section 3309(a)(1) applies, if such services are provided to or on behalf of an educational institution, compensation may be denied under the same circumstances as described in clauses (i) through (iv), and[1]

(B) payments (in lieu of contributions) with respect to service to which section 3309(a)(1) applies may be made into the State unemployment fund on the basis set forth in section 3309(a)(2);

(7) an individual who has received compensation during his benefit year is required to have had work since the beginning of such year in order to qualify for compensation in his next benefit year;

(8) compensation shall not be denied to an individual for any week because he is in training with the approval of the State agency (or because of the application, to any such week in training, of State law provisions relating to availability for work, active search for work, or refusal to accept work);

(9)(A) compensation shall not be denied or reduced to an individual solely because he files a claim in another State (or a contiguous country with which the United States has an agreement with respect to unemployment compensation) or because he resides in another State (or such a contiguous country) at the time he files a claim for unemployment compensation;

(B) the State shall participate in any arrangements for the payment of compensation on the basis of combining an individual's wages and employment covered under the State law with his wages and employment covered under the unemployment compensation law of other States which are approved by the Secretary of Labor in consultation with the State unemployment compensation agencies as reasonably calculated to assure the prompt and full payment of compensation in such situations. Any such arrangement shall include provisions for (i) applying the base period of a single State law to a claim involving the combining of an individual's wages and employment covered under two or more State laws, and (ii) avoiding duplicate use of wages and employment by reason of such combining;

(10) compensation shall not be denied to any individual by reason of cancellation of wage credits or total reduction of his benefit rights for any cause other than discharge for misconduct connected with his work, fraud in connection with a claim for compensation, or receipt of disqualifying income;

(11) extended compensation shall be payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970;

(12) no person shall be denied compensation under such State law solely on the basis of pregnancy or termination of pregnancy;

(13) compensation shall not be payable to any individual on the basis of any services, substantially all of which consist of partici-

[1] P.L. 98-21, §521(a)(1), added clause (v).

pating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods);

(14) (A) compensation shall not be payable on the basis of services performed by an alien unless such alien is an individual who was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed (including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act),

(B) any data or information required of individuals applying for compensation to determine whether compensation is not payable to them because of their alien status shall be uniformly required from all applicants for compensation, and

(C) in the case of an individual whose application for compensation would otherwise be approved, no determination by the State agency that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence;

(15) the amount of compensation payable to an individual for any week which begins after March 31, 1980, and which begins in a period with respect to which such individual is receiving a governmental or other pension, retirement or retired pay, annuity, or any other similar periodic payment which is based on the previous work of such individual shall be reduced (but not below zero) by an amount equal to the amount of such pension, retirement or retired pay, annuity, or other payment, which is reasonably attributable to such week except that—

(A) the requirements of this paragraph shall apply to any pension, retirement or retired pay, annuity, or other similar periodic payment only if—

(i) such pension, retirement or retired pay, annuity, or similar payment is under a plan maintained (or contributed to) by a base period employer or chargeable employer (as determined under applicable law), and

(ii) in the case of such a payment not made under the Social Security Act or the Railroad Retirement Act of 1974 (or the corresponding provisions of prior law), services performed for such employer by the individual after the beginning of the base period (or remuneration for such services) affect eligibility for, or increase the amount of, such pension, retirement or retired pay, annuity, or similar payment, and

(B) the State law may provide for limitations on the amount of any such a reduction to take into account contributions made by the individual for the pension, retirement or retired pay, annuity, or other similar periodic payment;

(16)(A) wage information contained in the records of the agency administering the State law which is necessary (as

determined by the Secretary of Health, Education, and Welfare in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under part A of title IV of the Social Security Act, shall be made available to a State or political subdivision thereof when such information is specifically requested by such State or political subdivision for such purposes, and

(B) such safeguards are established as are necessary (as determined by the Secretary of Health, Education, and Welfare in regulations) to insure that such information is used only for the purposes authorized under subparagraph (A);

(17) any interest required to be paid on advances under title XII of the Social Security Act shall be paid in a timely manner and shall not be paid, directly or indirectly (by an equivalent reduction in State unemployment taxes or otherwise) by such State from amounts in such State's unemployment fund; and[1]

(18)[2] all the rights, privileges, or immunities conferred by such law or by acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal such law at any time.

(b) NOTIFICATION.—The Secretary of Labor shall, upon approving such law, notify the governor of the State of his approval.

(c) CERTIFICATION.—On October 31 of each taxable year the Secretary of Labor shall certify to the Secretary of the Treasury each State whose law he has previously approved, except that he shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has amended its law so that it no longer contains the provisions specified in subsection (a) or has with respect to the 12-month period ending on such October 31 failed to comply substantially with any such provision in such subsection. No finding of a failure to comply substantially with any provision in paragraph (5) of subsection (a) shall be based on an application or interpretation of State law (1) until all administrative review provided for under the laws of the State has been exhausted, or (2) with respect to which the time for judicial review provided by the laws of the State has not expired, or (3) with respect to which any judicial review is pending. On October 31 of any taxable year, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by law to be included therein (including provisions relating to the Federal-State Extended Unemployment Compensation Act of 1970 (or any amendments thereto) as required under subsection (a)(11)), or has, with respect to the twelve-month period ending on such October 31, failed to comply substantially with any such provision.[3]

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[1] P.L. 98-21, §515(b), inserted this paragraph (17).

[2] P.L. 98-21, §515(b), redesignated paragraph (17) as paragraph (18).

[3] P.L. 97-35, §2408(a), struck out, "On October 31 of any taxable year after 1971, the Secretary of Labor shall not certify any State which, after reasonable notice and opportunity for hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Employment Security Amendments of 1970 to be included therein, or has with respect to the 12-month period ending on such October 31, failed to comply substantially with any such provision. On October 31 of any taxable year after 1977, the Secretary shall not certify any State which, after reasonable notice and opportunity for a hearing to the State agency, the Secretary of Labor finds has failed to amend its law so that it contains each of the provisions required by reason of the enactment of the Unemployment Compensation Amendments of 1976 to be included therein, or has with respect to the 12-month

(d) NOTICE OF NONCERTIFICATION.—If at any time the Secretary of Labor has reason to believe that a State whose law he has previously approved may not be certified under subsection (c), he shall promptly so notify the governor of such State.

(e) CHANGE OF LAW DURING 12-MONTH PERIOD.—Whenever—

(1) any provision of this section, section 3302, or section 3303 refers to a 12-month period ending on October 31 of a year, and

(2) the law applicable to one portion of such period differs from the law applicable to another portion of such period,

then such provision shall be applied by taking into account for each such portion the law applicable to such portion.

(f) DEFINITION OF INSTITUTION OF HIGHER EDUCATION.—For purposes of subsection (a)(6), the term "institution of higher education" means an educational institution in any State which—

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond high school;

(3) provides an educational program for it which awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, or offers a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

SEC. 3305. APPLICABILITY OF STATE LAW.

(a) INTERSTATE AND FOREIGN COMMERCE.—No person required under a State law to make payments to an unemployment fund shall be relieved from compliance therewith on the ground that he is engaged in interstate or foreign commerce, or that the State law does not distinguish between employees engaged in interstate or foreign commerce and those engaged in intrastate commerce.

(b) FEDERAL INSTRUMENTALITIES IN GENERAL.—The legislature of any State may require any instrumentality of the United States (other than an instrumentality to which section 3306(c)(6) applies), and the individuals in its employ, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 and (except as provided in section 5240 of the Revised Statutes, as amended (12 U.S.C., sec. 484), and as modified by subsection (c)), to comply otherwise with such law. The permission granted in this subsection shall apply (A) only to the extent that no discrimination is made against such instrumentality, so that if the rate of contribution is uniform upon all other persons subject to such law on account of having individuals in their employ, and upon all employees of such persons, respectively, the contributions required of such instrumentality or the individuals in its employ shall not be at a greater rate than is required of such other persons and such employees, and if the rates are determined separately for different persons or classes of persons having individuals in their employ or for different classes of employees, the determination shall be based solely upon unemploy-

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period ending on such October 31, failed to comply substantially with any such provision." and inserted the preceding sentence.

ment experience and other factors bearing a direct relation to unemployment risk; (B) only if such State law makes provision for the refund of any contributions required under such law from an instrumentality of the United States or its employees for any year in the event such State is not certified by the Secretary of Labor under section 3304 with respect to such year; and (C) only if such State law makes provision for the payment of unemployment compensation to any employee of any such instrumentality of the United States in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable to employees of other employers under the State unemployment compensation law.

(c) NATIONAL BANKS.—Nothing contained in section 5240 of the Revised Statutes, as amended (12 U.S.C. 484), shall prevent any State from requiring any national banking association to render returns and reports relative to the association's employees, their remuneration and services, to the same extent that other persons are required to render like returns and reports under a State law requiring contributions to an unemployment fund. The Comptroller of the Currency shall, upon receipt of a copy of any such return or report of a national banking association from, and upon request of, any duly authorized official, body, or commission of a State, cause an examination of the correctness of such return or report to be made at the time of the next succeeding examination of such association, and shall thereupon transmit to such official, body, or commission a complete statement of his findings respecting the accuracy of such returns or reports.

(d) FEDERAL PROPERTY.—No person shall be relieved from compliance with a State unemployment compensation law on the ground that services were performed on land or premises owned, held, or possessed by the United States, and any State shall have full jurisdiction and power to enforce the provisions of such law to the same extent and with the same effect as though such place were not owned, held, or possessed by the United States.

[(e) Repealed.[1]]

(f) AMERICAN VESSELS.—The legislature of any State in which a person maintains the operating office, from which the operations of an American vessel operating on navigable waters within or within and without the United States are ordinarily and regularly supervised, managed, directed and controlled, may require such person and the officers and members of the crew of such vessel to make contributions to its unemployment fund under its State unemployment compensation law approved by the Secretary of Labor under section 3304 and otherwise to comply with its unemployment compensation law with respect to the service performed by an officer or member of the crew on or in connection with such vessel to the same extent and with the same effect as though such service was performed entirely within such State. Such person and the officers and members of the crew of such vessel shall not be required to make contributions, with respect to such service, to the unemployment fund of any other State. The permission granted by this subsection is subject to the condition that such service shall be treated, for purposes of wage credits given employees, like other service subject

[1] P.L. 83-767, §4(c); 68 Stat. 1135.

to such State unemployment compensation law performed for such person in such State, and also subject to the same limitation, with respect to contributions required from such person and from the officers and members of the crew of such vessel, as is imposed by the second sentence (other than clause (B) thereof) of subsection (b) with respect to contributions required from instrumentalities of the United States and from individuals in their employ.

(g) VESSELS OPERATED BY GENERAL AGENTS OF UNITED STATES.—The permission granted by subsection (f) shall apply in the same manner and under the same conditions (including the obligation to comply with all requirements of State unemployment compensation laws) to general agents of the Secretary of Commerce with respect to service performed by officers and members of the crew on or in connection with American vessels—

(1) owned by or bareboat chartered to the United States, and

(2) whose business is conducted by such general agents.

As to any such vessel, the State permitted to require contributions on account of such service shall be the State to which the general agent would make contributions if the vessel were operated for his own account. Such general agents are designated, for this purpose, instrumentalities of the United States neither wholly nor partially owned by it and shall not be exempt from the tax imposed by section 3301. The permission granted by this subsection is subject to the same conditions and limitations as are imposed in subsection (f), except that clause (B) of the second sentence of subsection (b) shall apply.

(h) REQUIREMENT BY STATE OF CONTRIBUTIONS.—Any State may, as to service performed on account of which contributions are made pursuant to subsection (g)—

(1) require contributions from persons performing such service under its unemployment compensation law or temporary disability insurance law administered in connection therewith, and

(2) require general agents of the Secretary of Commerce to make contributions under such temporary disability insurance law and to make such deductions from wages or remuneration as are required by such unemployment compensation or temporary disability insurance law.

(i) GENERAL AGENT AS LEGAL ENTITY.—Each general agent of the Secretary of Commerce making contributions pursuant to subsection (g) or (h) shall, for purposes of such subsections, be considered a legal entity in his capacity as an instrumentality of the United States, separate and distinct from his identity as a person employing individuals on his own account.

(j) DENIAL OF CREDITS IN CERTAIN CASES.—Any person required, pursuant to tl permission granted by this section, to make contributions to an unemployment fund under a State unemployment compensation law approved by the Secretary of Labor under section 3304 shall not be entitled to the credits permitted, with respect to the unemployment compensation law of a State, by subsections (a) and (b) of section 3302 against the tax imposed by section 3301 for any taxable year if, on October 31 of such taxable year, the Secretary of Labor certifies to the Secretary of the Treasury his finding, after reasonable notice and opportunity for hearing to the State agency, that the unemployment compensation law of such State is inconsist-

ent with any one or more of the conditions on the basis of which such permission is granted or that, in the application of the State law with respect to the 12-month period ending on such October 31, there has been a substantial failure to comply with any one or more of such conditions. For purposes of section 3310, a finding of the Secretary of Labor under this subsection shall be treated as a finding under section 3304(c).

SEC. 3306. DEFINITIONS.

(a) EMPLOYER.—For purposes of this chapter—

(1) IN GENERAL.—The term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) AGRICULTURAL LABOR.—In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) DOMESTIC SERVICE.—In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

(4) SPECIAL RULE.—A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) WAGES.—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000[1] with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter

[1]P.L. 97-248, §271(a), struck out "$6,000" and substituted "$7,000".

referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,000[1] to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A)[2] sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workman's[3] compensation law), or[4]

(B) [5] medical or hospitalization expenses in connection with sickness or accident disability, or

(C) [6] death;

[(3) Stricken.[7]]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401(a) which is exempt from tax under section 501(a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

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[1] P.L. 97-248, §271(a), struck out "$6,000" and substituted "$7,000".
[2] P.L. 98-21, §324(b)(3)(A), struck out subparagraph (A) and redesignated subparagraph (B) as subparagraph (A).
[3] As in original.
[4] P.L. 98-21, §324(b)(4)(A), amended this subparagraph (A) in its entirety.
[5] P.L. 98-21, §324(b)(3)(A), redesignated subparagraph (C) as subparagraph (B).
[6] P.L. 98-21, §324(b)(3)(A), redesignated subparagraph (D) as subparagraph (C).
[7] P.L. 98-21, §324(b)(3)(B), struck out paragraph (3).

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403(a),

(C) under or to a bond purchase plan which, at the time of such payment, is a qualified bond purchase plan described in section 405(a),

(D) under a simplified employee pension if, at the time of the payment, it is reasonable to believe that the employee will be entitled to a deduction under section 219(b)(2)[1] for such payment,

(E) under or to an annuity contract described in section 403(b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),[2]

(F) under or to an exempt governmental deferred compensation plan (as defined in section 3121(v)(3)), or[3]

(G) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974;[4]

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

[(8) Stricken.[5]]

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217;

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of (i) death, or[6] (ii) retirement for disability, [(iii) Stricken.[7]] and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of

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[1]P.L. 98-21, §328(c), struck out "section 219" and substituted "section 219(b)(2)".
[2]P.L. 98-21, §324(b)(2)(C), added subparagraph (E).
[3]P.L. 98-21, §324(b)(2)(C), added subparagraph (F).
[4]P.L. 98-21, §324(b)(2)(C), added subparagraph (G).
[5]P.L. 98-21, §324(b)(3)(B), struck out paragraph (8).
[6]P.L. 98-21, §324(b)(3)(C)(i), inserted "or".
[7]P.L. 98-21, §324(b)(3)(C)(ii), struck out "or (iii) retirement after attaining an age specified in the plan referred to in subparagraph (B) or in a pension plan of the employer,".

employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 or 129[1],

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;[2] or

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died.[3]

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be treated for purposes of this chapter and chapter 22 as the employer with respect to such wages.[4] Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.[5]

(c) EMPLOYMENT.—For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and (A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and (B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an

[1] P.L. 97-34, §124(e)(2)(A), inserted "or 129".
[2] P.L. 98-21, §327(c)(3), added paragraph (14).
[3] P.L. 98-135, §201(a), added paragraph (15).
[4] P.L. 98-21, §324(b)(4)(B), added the preceding sentence.
[5] P.L. 98-21, §327(c)(4), added the preceding sentence.

American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed before January 1, 1986[1], by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such

[1]P.L. 97-248, §277, struck out "1982" and substituted "1984".
P.L. 98-135, §202, struck out "1984" and substituted "1986".

section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501(c)(3) which is exempt from income tax under section 501(a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501(a) (other than an organization described in section 401(a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school, college, or university, if such service is performed (i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or (ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that (I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and (II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual[1] who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

P.L. 97-248, §276(a)(1), struck out "under the age of 22".

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(18) service described in section 3121(b)(20);[1]

(19)[2] service which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F) or (J) of section

[1] P.L. 97-34, §822(a)(3), inserted this paragraph (18).
[2] P.L. 97-34, §822(a)(2), redesignated paragraph (18) as paragraph (19).

101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101(a)(15)(F) or (J)), and which is performed to carry out the purpose specified in subparagraph (F) or (J), as the case may be; or

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 33⅓ percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year.[1]

(d) INCLUDED AND EXCLUDED SERVICE.—For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) STATE AGENCY.—For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) UNEMPLOYMENT FUND.—For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of

[1] P.L. 97-248, §276(b)(1)(C), added paragraph (20).

section 3305(b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration; and

(2) the amounts specified by section 903(c)(2) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices.

(g) CONTRIBUTIONS.—For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the remuneration of individuals in his employ.

(h) COMPENSATION.—For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) EMPLOYEE.—For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121(d), except that subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) STATE, UNITED STATES, and AMERICAN EMPLOYER.—For purposes of this chapter—

(1) STATE.—The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) UNITED STATES.—The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) AMERICAN EMPLOYER.—The term "American employer" means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this section, as a citizen of the United States.

(k) AGRICULTURAL LABOR.—For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;"

[(l) Repealed.[1]]

(m) AMERICAN VESSEL AND AIRCRAFT.—For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) VESSELS OPERATED BY GENERAL AGENTS OF UNITED STATES.—Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(o) SPECIAL RULE IN CASE OF CERTAIN AGRICULTURAL WORKERS.—

(1) CREW LEADERS WHO ARE REGISTERED OR PROVIDE SPECIALIZED AGRICULTURAL LABOR.—For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) OTHER CREW LEADERS.—For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not

[1] P.L. 83-767, §4(c); 68 Stat. 1135.

treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) CREW LEADER.—For purposes of this subsection, the term "crew leader" means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) CONCURRENT EMPLOYMENT BY TWO OR MORE EMPLOYERS.—For purposes of sections 3301, 3302, and 3306(b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(q) FULL TIME STUDENT.—For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

(A) the individual was enrolled as a full time student at an educational institution for the immediately preceding academic year or term, and

(B) there is a reasonable assurance that the individual will be so enrolled for the immediately succeeding academic year or term after the period described in subparagraph (A).[1]

(r) TREATMENT OF CERTAIN DEFERRED COMPENSATION AND SALARY REDUCTION ARRANGEMENTS.—

(1) CERTAIN EMPLOYER CONTRIBUTIONS TREATED AS WAGES.—Nothing in any paragraph of subsection (b) (other than paragraph (1)) shall exclude from the term "wages"—

(A) any employer contribution under a qualified cash or deferred arrangement (as defined in section 401(k)) to the extent not included in gross income by reason of section 402(a)(8), or

(B) any amount treated as an employer contribution under section 414(h)(2).

(2) TREATMENT OF CERTAIN NONQUALIFIED DEFERRED COMPENSATION PLANS.—

[1] P.L. 97-248, §276(b)(2), added subsection (q).

(A) IN GENERAL.—Any amount deferred under a nonqualified deferred compensation plan shall be taken into account for purposes of this chapter as of the later of—

(i) when the services are performed, or

(ii) when there is no substantial risk of forfeiture of the rights to such amount.

(B) TAXED ONLY ONCE.—Any amount taken into account as wages by reason of subparagraph (A) (and the income attributable thereto) shall not thereafter be treated as wages for purposes of this chapter.

(C) NONQUALIFIED DEFERRED COMPENSATION PLAN.—For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).[1]

SEC. 3307. DEDUCTIONS AS CONSTRUCTIVE PAYMENTS.

Whenever under this chapter or any act of Congress, or under the law of any State, an employer is required or permitted to deduct any amount from the remuneration of an employee and to pay the amount deducted to the United States, a State, or any political subdivision thereof, then for purposes of this chapter the amount so deducted shall be considered to have been paid to the employee at the time of such deduction.

SEC. 3308. INSTRUMENTALITIES OF THE UNITED STATES.

Notwithstanding any other provision of law (whether enacted before or after the enactment of this section) which grants to any instrumentality of the United States an exemption from taxation, such instrumentality shall not be exempt from the tax imposed by section 3301 unless such other provision of law grants a specific exemption, by reference to section 3301 (or the corresponding section of prior law), from the tax imposed by such section.

SEC. 3309. STATE LAW COVERAGE OF SERVICES PERFORMED FOR NONPROFIT ORGANIZATIONS OR GOVERNMENTAL ENTITIES.

(a) STATE LAW REQUIREMENTS.—For purposes of section 3304(a)(6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306(c), and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306(c); and

(2) the State law shall provide that a governmental entity or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or

[1]P.L. 98-21, §324(b)(1), added subsection (r).

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other organizations so electing will make the payments required under such elections.

(b) SECTION NOT TO APPLY TO CERTAIN SERVICE.—This section shall not apply to service performed—

(1) in the employ of (A) a church or convention or association of churches, or (B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches;

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306(c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency; or

(E) in a position which, under or pursuant to the State law, is designated as (i) a major nontenured policymaking or advisory position, or (ii) a policymaking or advisory position the performance of the duties of which ordinarily does not require more than 8 hours per week;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof, by an individual receiving such work relief or work training; and

(6) by an inmate of a custodial or penal institution.

(c) NONPROFIT ORGANIZATIONS MUST EMPLOY 4 OR MORE.—This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306(c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

SEC. 3310. JUDICIAL REVIEW.

(a) IN GENERAL.—Whenever under section 3303(b) or section 3304(c) the Secretary of Labor makes a finding pursuant to which he is required to withhold a certification with respect to a State under such section, such State may, within 60 days after the Governor of the State has been notified of such action, file with the United States court of appeals for the circuit in which such State is located or with the United States Court of Appeals for the District of Columbia, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary of Labor. The Secretary of Labor thereupon shall file in the court the record of the proceedings on which he based his action as provided in section 2112 of title 28 of the United States Code.

(b) FINDINGS OF FACT.—The findings of fact by the Secretary of Labor, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary of Labor to take further evidence, and the Secretary of Labor may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(c) JURISDICTION OF COURT; REVIEW.—The court shall have jurisdiction to affirm the action of the Secretary of Labor or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28 of the United States Code.

(d) STAY OF SECRETARY OF LABOR'S ACTION.—

(1) The Secretary of Labor shall not withhold any certification under section 3303(b) or section 3304(c) until the expiration of 60 days after the Governor of the State has been notified of the action referred to in subsection (a) or until the State has filed a petition for review of such action, whichever is earlier.

(2) The commencement of judicial proceedings under this section shall stay the Secretary of Labor's action for a period of 30 days, and the court may thereafter grant interim relief if warranted, including a further stay of the Secretary of Labor's action and including such other relief as may be necessary to preserve status or rights.

(e) PREFERENCE.—Any judicial proceedings under this section shall be entitled to, and, upon request of the Secretary of Labor or the State, shall receive a preference and shall be heard and determined as expeditiously as possible.

SEC. 3311. SHORT TITLE.

This chapter may be cited as the "Federal Unemployment Tax Act."

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CHAPTER 24—COLLECTION OF INCOME TAX AT SOURCE ON WAGES[1]

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SEC. 3402. INCOME TAX COLLECTED AT SOURCE.

(a) REQUIREMENT OF WITHHOLDING.—

(1) IN GENERAL.—Except as otherwise provided in this section, every employer making payment of wages shall deduct and withhold upon such wages a tax determined in accordance with tables or computational procedures prescribed by the Secretary. Any tables or procedures prescribed under this paragraph shall—

(A) apply with respect to the amount of wages paid during such periods as the Secretary may prescribe, and

(B) be in such form, and provide for such amounts to be deducted and withheld, as the Secretary determines to be most appropriate to carry out the purposes of this chapter and to reflect the provisions of chapter 1 applicable to such periods.

(2) AMOUNT OF WAGES.—For purposes of applying tables or procedures prescribed under paragraph (1), the term "the amount of wages" means the amount by which the wages exceed the number of withholding exemptions claimed multiplied by the amount of one such exemption. The amount of each withholding exemption shall be equal to the amount of one personal exemption provided in section 151(b), prorated to the payroll period. The maximum number of withholding exemptions permitted shall be calculated in accordance with regulations prescribed by the Secretary under this section, taking into account any reduction in withholding to which an employee is entitled under this section.

(3) CHANGES MADE BY SECTION 101 OF THE ECONOMIC RECOVERY TAX ACT OF 1981.—Notwithstanding the provisions of this subsection, the Secretary shall modify the tables and procedures under paragraph (1) to reflect—

(A) the amendments made by section 101(b) of the Economic Recovery Tax Act of 1981, and such modification shall take effect on October 1, 1981, as if such amendments made a 5-percent reduction effective on such date, and

(B) the amendments made by section 101(a) of such Act, and such modifications shall take effect—

(i) on July 1, 1982, as if the reductions in the rate of tax under section 1 (as amended by such section) were

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[1] P.L. 97-248, §307(b)(4), amended Chapter 24 heading in its entirety.
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(b)(4).

[2] P.L. 98-67, §104(d)(4), added §3406 to the table of sections.

attributable to a 10-percent reduction effective on such date, and

(ii) on July 1, 1983, as if such reductions were attributable to a 10-percent reduction effective on such date.[1]

* * * * * * *

(i) CHANGES IN WITHHOLDING.—

(1) IN GENERAL.—The Secretary may by regulations provide for increases or decreases in the amount of withholding otherwise required under this section in cases where the employee requests such changes.

(2) TREATMENT AS TAX.—Any increased withholding under paragraph (1) shall for all purposes be considered tax required to be deducted and withheld under this chapter.[2]

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CHAPTER 25—GENERAL PROVISIONS RELATING TO EMPLOYMENT TAXES[3]

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SEC. 3501. COLLECTION AND PAYMENT OF TAXES.

The taxes imposed by this subtitle shall be collected by the Secretary and shall be paid into the Treasury of the United States as internal-revenue collections.

SEC. 3502. NONDEDUCTIBILITY OF TAXES IN COMPUTING TAXABLE INCOME.

(a) The taxes imposed by section 3101 of chapter 21, and by sections 3201 and 3211 of chapter 22 shall not be allowed as a deduction to the taxpayer in computing taxable income under subtitle A.

(b) The tax deducted and withheld under[5] chapter 24 shall not be allowed as a deduction either to the employer or to the recipient of the income in computing taxable income under subtitle A.

[(c) Repealed.[6]]

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[1] P.L. 97-34, §101(e)(1), amended subsection (a) in its entirety.
[2] P.L. 97-34, §101(e)(4), amended subsection (i) in its entirety.
[3] P.L. 97-248, §307(b)(5), amended in its entirety the chapter 25 heading.
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(b)(5).
[4] P.L. 98-21, §123(b)(2), added §3510 to the table of sections.
[5] P.L. 97-248, §305(b)(1), inserted "subchapter A of".
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §305(b)(1).
[6] P.L. 97-248, §305(b)(2), added subsection (c).
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §305(b)(2).

SEC. 3503. ERRONEOUS PAYMENTS.

Any tax paid under chapter 21 or 22 by a taxpayer with respect to any period with respect to which he is not liable to tax under such chapter shall be credited against the tax, if any, imposed by such other chapter upon the taxpayer, and the balance, if any, shall be refunded.

SEC. 3504. ACTS TO BE PERFORMED BY AGENTS.

In case a fiduciary, agent, or other person has the control, receipt, custody or disposal of, or pays the wages of an employee or group of employees employed by one or more employers, the Secretary, under regulations prescribed by him, is authorized to designate such fiduciary, agent, or other person to perform such acts as are required of employers under this title and as the Secretary may specify. Except as may be otherwise prescribed by the Secretary, all provisions of law (including penalties) applicable in respect of an employer shall be applicable to a fiduciary, agent, or other person so designated but, except as so provided, the employer for whom such fiduciary, agent, or other person acts shall remain subject to the provisions of law (including penalties) applicable in respect of employers.

SEC. 3505. LIABILITY OF THIRD PARTIES PAYING OR PROVIDING FOR WAGES.

(a) DIRECT PAYMENT BY THIRD PARTIES.—For purposes of sections 3102, 3202, 3402, and 3403, if a lender, surety, or other person, who is not an employer under such sections with respect to an employee or group of employees, pays wages directly to such an employee or group of employees, employed by one or more employers, or to an agent on behalf of such employee or employees, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) required to be deducted and withheld from such wages by such employer.

(b) PERSONAL LIABILITY WHERE FUNDS ARE SUPPLIED.—If a lender, surety, or other person supplies funds to or for the account of an employer for the specific purpose of paying wages of the employees of such employer, with actual notice or knowledge (within the meaning of section 6323(i)(1)) that such employer does not intend to or will not be able to make timely payment or deposit of the amounts of tax required by this subtitle to be deducted and withheld by such employer from such wages, such lender, surety, or other person shall be liable in his own person and estate to the United States in a sum equal to the taxes (together with interest) which are not paid over to the United States by such employer with respect to such wages. However, the liability of such lender, surety, or other person shall be limited to an amount equal to 25 percent of the amount so supplied to or for the account of such employer for such purpose.

(c) EFFECT OF PAYMENT.—Any amounts paid to the United States pursuant to this section shall be credited against the liability of the employer.

SEC. 3506. INDIVIDUALS PROVIDING COMPANION SITTING PLACEMENT SERVICES.

(a) IN GENERAL.—For purposes of this subtitle, a person engaged in the trade or business of putting sitters in touch with individuals who

wish to employ them shall not be treated as the employer of such sitters (and such sitters shall not be treated as employees of such person) if such person does not pay or receive the salary or wages of the sitters and is compensated by the sitters or the persons who employ them on a fee basis.

(b) DEFINITION.—For purposes of this section, the term "sitters" means individuals who furnish personal attendance, companionship, or household care services to children or to individuals who are elderly or disabled.

(c) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purpose of this section.

SEC. 3507. ADVANCE PAYMENT OF EARNED INCOME CREDIT.

(a) GENERAL RULE.—Except as otherwise provided in this section, every employer making payment of wages to an employee with respect to whom an earned income eligibility certificate is in effect shall, at the time of paying such wages, make an additional payment to such employee equal to such employee's earned income advance amount.

(b) EARNED INCOME ELIGIBILITY CERTIFICATE.—For purposes of this title, an earned income eligibility certificate is a statement furnished by an employee to the employer which—

(1) certifies that the employee will be eligible to receive the credit provided by section 43 for the taxable year,

(2) certifies that the employee does not have an earned income eligibility certificate in effect for the calendar year with respect to the payment of wages by another employer, and

(3) states whether or not the employee's spouse has an earned income eligibility certificate in effect.

For purposes of this section, a certificate shall be treated as being in effect with respect to a spouse if such a certificate will be in effect on the first status determination date following the date on which the employee furnishes the statement in question.

(c) EARNED INCOME ADVANCE AMOUNT.—

(1) IN GENERAL.—For purposes of this title, the term "earned income advance amount" means, with respect to any payroll period, the amount determined—

(A) on the basis of the employee's wages from the employer for such period, and

(B) in accordance with tables prescribed by the Secretary.

(2) ADVANCE AMOUNT TABLES.—The tables referred to in paragraph (1)(B)—

(A) shall be similar in form to the tables prescribed under section 3402 and, to the maximum extent feasible, shall be coordinated with such tables, and

(B) if the employee is not married, or if no earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $5,000 of earned income, which

(ii) phases out between $6,000 and $10,000 of earned income, or

(C) if an earned income eligibility certificate is in effect with respect to the spouse of the employee, shall treat the credit provided by section 43 as if it were a credit—

(i) of not more than 10 percent of the first $2,500 of earned income, which

(ii) phases out between $3,000 and $5,000 of earned income.

(d) PAYMENTS TO BE TREATED AS PAYMENTS OF WITHHOLDING AND FICA TAXES.

(1) IN GENERAL.—For purposes of this title, payments made by an employer under subsection (a) to his employees for any payroll period—

(A) shall not be treated as the payment of compensation, and

(B) shall be treated as made out of—

(i) amounts required to be deducted and withheld for the payroll period under section 3401 (relating to wage withholding), and

(ii) amounts required to be deducted for the payroll period under section 3102 (relating to FICA employee taxes), and

(iii) amounts of the taxes imposed for the payroll period under section 3111 (relating to FICA employer taxes),

as if the employer had paid to the Secretary, on the day on which the wages are paid to the employees, an amount equal to such payments.

(2) ADVANCE PAYMENTS EXCEED TAXES DUE.—In the case of any employer, if for any payroll period the aggregate amount of earned income advance payments exceeds the sum of the amounts referred to in paragraph (1)(B), each such advance payment shall be reduced by an amount which bears the same ratio to such excess as such advance payment bears to the aggregate amount of all such advance payments.

(3) EMPLOYER MAY MAKE FULL ADVANCE PAYMENTS.—The Secretary shall prescribe regulations under which an employer may elect (in lieu of any application of paragraph (2))—

(A) to pay in full all earned income advance amounts, and

(B) to have additional amounts paid by reason of this paragraph treated as the advance payment of taxes imposed by this title.

(4) FAILURE TO MAKE ADVANCE PAYMENTS.—For purposes of this title (including penalties), failure to make any advance payment under this section at the time provided therefor shall be treated as the failure at such time to deduct and withhold under[1] chapter 24 an amount equal to the amount of such advance payment.

(e) FURNISHING AND TAKING EFFECT OF CERTIFICATES.—For purposes of this section—

(1) WHEN CERTIFICATE TAKES EFFECT.—

(A) FIRST CERTIFICATE FURNISHED.—An earned income eligibility certificate furnished the employer in cases in which

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[1] P.L. 97-248, §307(a)(3), inserted "subchapter A of".
P.L. 98-67, §102(a), repealed the amendment made by P.L. 97-248, §307(a)(3).

no previous such certificate had been in effect for the calendar year shall take effect as of the beginning of the first payroll period ending, or the first payment of wages made without regard to a payroll period, on or after the date on which such certificate is so furnished (or if later, the first day of the calendar year for which furnished).

(B) LATER CERTIFICATE.—An earned income eligibility certificate furnished the employer in cases in which a previous such certificate had been in effect for the calendar year shall take effect with respect to the first payment of wages made on or after the first status determination date which occurs at least 30 days after the date on which such certificate is so furnished, except that at the election of the employer such certificate may be made effective with respect to any payment of wages made on or after the date on which such certificate is so furnished. For purposes of this section, the term "status determination date" means January 1, May 1, July 1, and October 1 of each year.

(2) PERIOD DURING WHICH CERTIFICATE REMAINS IN EFFECT.—An earned income eligibility certificate which takes effect under this section for any calendar year shall continue in effect with respect to the employee during such calendar year until revoked by the employee or until another such certificate takes effect under this section.

(3) CHANGE OF STATUS.—

(A) REQUIREMENT TO REVOKE OR FURNISH NEW CERTIFICATE.—If, after an employee has furnished an earned income eligibility certificate under this section, there has been a change of circumstances which has the effect of—

(i) making the employee ineligible for the credit provided by section 43 for the taxable year, or

(ii) causing an earned income eligibility certificate to be in effect with respect to the spouse of the employee,

the employee shall, within 10 days after such change in circumstances, furnish the employer with a revocation of such certificate or with a new certificate (as the case may be). Such a revocation (or such a new certificate) shall take effect under the rules provided by paragraph (1)(B) for a later certificate and shall be made in such form as the Secretary shall by regulations prescribe.

(B) CERTIFICATE NO LONGER IN EFFECT.—If, after an employee has furnished an earned income eligibility certificate under this section which certifies that such a certificate is in effect with respect to the spouse of the employee, such a certificate is no longer in effect with respect to such spouse, then the employee may furnish the employer with a new earned income eligibility certificate.

(4) FORM AND CONTENTS OF CERTIFICATE.—Earned income eligibility certificates shall be in such form and contain such other information as the Secretary may by regulations prescribe.

(5) TAXABLE YEAR DEFINED.—The term "taxable year" means the last taxable year of the employee under subtitle A beginning in the calendar year in which the wages are paid.

SEC. 3508. TREATMENT OF REAL ESTATE AGENTS AND DIRECT SELLERS.[1]

(a) GENERAL RULE.—For purposes of this title, in the case of services performed as a qualified real estate agent or as a direct seller—

(1) the individual performing such services shall not be treated as an employee, and

(2) the person for whom such services are performed shall not be treated as an employer.

(b) DEFINITIONS.—For purposes of this section—

(1) QUALIFIED REAL ESTATE AGENT.—The term "qualified real estate agent" means any individual who is a sales person if—

(A) such individual is a licensed real estate agent,

(B) substantially all of the remuneration (whether or not paid in cash) for the services performed by such individual as a real estate agent is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the individual are performed pursuant to a written contract between such individual and the person for whom the services are performed and such contract provides that the individual will not be treated as an employee with respect to such services for Federal tax purposes.

(2) DIRECT SELLER.—The term "direct seller" means any person if—

(A) such person—

(i) is engaged in the trade or business of selling (or soliciting the sale of) consumer products to any buyer on a buy-sell basis, a deposit-commission basis, or any similar basis which the Secretary prescribes by regulations, for resale (by the buyer or any other person) in the home or otherwise than in a permanent retail establishment, or

(ii) is engaged in the trade or business of selling (or soliciting the sale of) consumer products in the home or otherwise than in a permanent retail establishment,

(B) substantially all the remuneration (whether or not paid in cash) for the performance of the services described in subparagraph (A) is directly related to sales or other output (including the performance of services) rather than to the number of hours worked, and

(C) the services performed by the person are performed pursuant to a written contract between such person and the person for whom the services are performed and such contract provides that the person will not be treated as an employee with respect to such services for Federal tax purposes.

(3) COORDINATION WITH RETIREMENT PLANS FOR SELF-EMPLOYED.—This section shall not apply for purposes of subtitle A to the extent that the individual is treated as an employee under section 401(c)(1) (relating to self-employed individuals).

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[1] P.L. 97-248, §269(a), added §3508.

SEC. 3509. DETERMINATION OF EMPLOYER'S LIABILITY FOR CERTAIN EMPLOYMENT TAXES.[1]

(a) IN GENERAL.—If any employer fails to deduct and withhold any tax under chapter 24 or subchapter A of chapter 21 with respect to any employee by reason of treating such employee as not being an employee for purposes of such chapter or subchapter, the amount of the employer's liability for—

(1) WITHHOLDING TAXES.—Tax under chapter 24 for such year with respect to such employee shall be determined as if the amount required to be deducted and withheld were equal to 1.5 percent of the wages (as defined in section 3401) paid to such employee.

(2) EMPLOYEE SOCIAL SECURITY TAX.—Taxes under subchapter A of chapter 21 with respect to such employee shall be determined as if the taxes imposed under such subchapter were 20 percent of the amount imposed under such subchapter without regard to this subparagraph.

(b) EMPLOYER'S LIABILITY INCREASED WHERE EMPLOYER DISREGARDS REPORTING REQUIREMENTS.—

(1) IN GENERAL.—In the case of an employer who fails to meet the applicable requirements of section 6041(a), 6041A, or 6051 with respect to any employee, unless such failure is due to reasonable cause and not willful neglect, subsection (a) shall be applied with respect to such employee—

(A) by substituting "3 percent" for "1.5 percent" in paragraph (1); and

(B) by substituting "40 percent" for "20 percent" in paragraph (2).

(2) APPLICABLE REQUIREMENTS.—For purposes of paragraph (1), the term "applicable requirements" means the requirements described in paragraph (1) which would be applicable consistent with the employer's treatment of the employee as not being an employee for purposes of chapter 24 or subchapter A of chapter 21.

(c) SECTION NOT TO APPLY IN CASES OF INTENTIONAL DISREGARD.—This section shall not apply to the determination of the employer's liability for tax under chapter 24 or subchapter A of chapter 21 if such liability is due to the employer's intentional disregard of the requirement to deduct and withhold such tax.

(d) SPECIAL RULES.—For purposes of this section—

(1) DETERMINATION OF LIABILITY.—If the amount of any liability for tax is determined under this section—

(A) the employee's liability for tax shall not be affected by the assessment or collection of the tax so determined,

(B) the employer shall not be entitled to recover from the employee any tax so determined, and

(C) sections 3402(d) and section 6521 shall not apply.

(2) SECTION NOT TO APPLY WHERE EMPLOYER DEDUCTS WAGE BUT NOT SOCIAL SECURITY TAXES.—This section shall not apply to any employer with respect to any wages if—

(A) the employer deducted and withheld any amount of the tax imposed by chapter 24 on such wages, but

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[1]P.L. 97-248, §270(a), added §3509.

(B) failed to deduct and withhold the amount of the tax imposed by subchapter A of chapter 21 with respect to such wages.

(3) SECTION NOT TO APPLY TO CERTAIN STATUTORY EMPLOYEES.—This section shall not apply to any tax under subchapter A of chapter 21 with respect to an individual described in subsection (d)(3) of section 3121 (without regard to whether such individual is described in paragraph (1) or (2) of such subsection).

SEC. 3510. CREDIT FOR INCREASED SOCIAL SECURITY EMPLOYEE TAXES AND RAILROAD RETIREMENT TIER 1 EMPLOYEE TAXES IMPOSED DURING 1984.[1]

(a) GENERAL RULE.—There shall be allowed as a credit against the tax imposed by section 3101(a) on wages received during 1984 an amount equal to 3/10 of 1 percent of the wages so received.

(b) TIME CREDIT ALLOWED.—The credit under subsection (a) shall be taken into account in determining the amount of the tax deducted under section 3102(a).

(c) WAGES.—For purposes of this section, the term "wages" has the meaning given to such term by section 3121(a).

(d) APPLICATION TO AGREEMENTS UNDER SECTION 218 OF THE SOCIAL SECURITY ACT.—For purposes of determining amounts equivalent to the tax imposed by section 3101(a) with respect to remuneration which—

(1) is covered by an agreement under section 218 of the Social Security Act, and

(2) is paid during 1984,

the credit allowed by subsection (a) shall be taken into account. A similar rule shall also apply in the case of an agreement under section 3121(l).

(e) CREDIT AGAINST RAILROAD RETIREMENT EMPLOYEE AND EMPLOYEE REPRESENTATIVE TAXES.—

(1) IN GENERAL.—There shall be allowed as a credit against the taxes imposed by sections 3201(a) and 3211(a) on compensation paid during 1984 and subject to such taxes at rates determined by reference to section 3101 an amount equal to 3/10 of 1 percent of such compensation.

(2) TIME CREDIT ALLOWED.—The credit under paragraph (1) shall be taken into account in determining the amount of the tax deducted under section 3202(a) (or the amount of the tax under section 3211(a)).

(3) COMPENSATION.—For purposes of this subsection, the term "compensation" has the meaning given to such term by section 3231(e).

(f) COORDINATION WITH SECTION 6413(c).—For purposes of subsection (c) of section 6413, in determining the amount of the tax imposed by section 3101 or 3201, any credit allowed by this section shall be taken into account.

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[1] P.L. 98-21, §123(b)(1), added §3510.

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Establish; maintain: 201(a)(3), (a)(4), (b)(1), (b)(2), (g)(2); 205(c)(2)(A); 1817(a)(1), (a)(2)
Revise after time limit: 205(c)(5)
Elect month unearned income counts: 1611(c)(3)
Encourage availability of durable medical equipment: 1833(f)(4)
Enroll individuals with eligible organization: 1876(c)(3)(C)
Enter into Agreement with
Agency or organization: 1816(a)
Attorney General; issuance of social security numbers: 205(c)(2)(B)(iii)
Coverage of interstate instrumentality: 218(k)(1)
Hospital
Demonstration project: 1883(g)
Extended care services: 1883(a)(1), (b)
Limitation: 1816(b)
Processing tax returns: 232
Secretary of Labor; State; work incentive program: 407(e)
Secretary of State and Attorney General; aliens: 415(c)(2); 1621(d)(2)
Skilled nursing facility: 1866(c)(2)
State (or State Agency)
Certify accredited hospitals: 1864(c)
Coverage: 218(a)(1)
Determine
Parent locatability: 453(f)

Secretary HHS; Authority and Duty (Cont.)
Enter into Agreement with (Cont.)
State (or State Agency) (Cont.)
Determine (Cont.)
Whether hospital or skilled nursing facility: 1864(a)
Disability determinations: 221(b); 1633
Enrollment of medical and public assistance recipients: 1843(a)
HHS determination of medicaid eligibility: 1634
Information; disability offset: 224(h)(2)
Issuance of social security numbers: 205(c)(2)(B)(iii)
Modification of agreement: 1843(g)(1), (h)(1)
Optional State supplementation: 1616(a), (b), (d); 1618(a)
Parent Locator Service use in parental kidnaping: 463(a)
Reimbursement from State; medicaid eligibility determination: 1634
Secretary of Labor; work incentive program: 407(e)
State interim assistance reimbursement: 1631(g)(4)
Teaching hospital: 1814(g)(1); 1835(e)(1)
Enter into Contract with
Carrier: 1842(a)
Conflict of interest: 1153(b)(2)(B)
Eligible organization: 1876(h)(1)
Physicians: 1842(a)
Utilization and quality control peer review organizations: 1153(b)(1); 1862(g)
Enter risk-sharing contract: 1876(g)(1)
Establish
Advisory council: 1122(i)(3)
All-inclusive fee for surgical procedure: 1833(i)(4)(B)
Area; peer review: 1153(a)(1)
Basis for
Calculating amounts for items and services: 1866(a)(2)(A)
Determining amounts payable for dialysis services: 1881(b)(2)(A)
Case mix index: 1886(a)(1)(B)(i)
Classification; hospital discharges: 1886(d)(4)(A)
Criteria
Availability of extended care services: 1861(v)(1)(G)(i)
Hospice care: 1861(dd)(1)(end)
Date transitional allowance effective: 1884(c)(3)
DRG Prospective Payment Rate
National: 1886(d)(2)(G)
Regional: 1886(d)(2)(G)
Error rates: 1903(u)(3)(A)

Secretary HHS; Authority and Duty (Cont.)
Establish (Cont.)
Expedited payment procedures: 205(q)(1)
Initial enrollment period: 1837(d)
Local or regional areas: 1153(a)(2)(B)
Maximum; necessary cost: 409(a)(1)(F)
Organizational unit; child support: 452(a)
Payment rate for laboratory: 1833(h)
Pilot coordinated audits: 1129(b)(1)
Procedures
Administer SSI program, including evidence and proof: 1631(d)(1)
Medicare supplemental policies: 1882(a)
Transitional allowance: 1884(a)
Procedures and safeguards: 1160(b)
Provider Reimbursement Review Board: 1878(a)
Regulations
Contract percentage; reasonable: 1887(b)(2)(B)
Reasonable compensation equivalent: 1887(a)(2)(B)
Standards and criteria for administration: 1816(f)
Reimbursement procedures: 1833(f)(3)
Renal disease network areas: 1881(c)(1)(A)
Standard overhead; fair fee: 1833(i)(2)(B)
State error rate: 403(i)(3)(A)
Target reimbursement rate for home dialysis: 1881(b)(6)
Title II procedures: 205(a)
Utilization guidelines: 1862(f)
Establish and maintain earnings records: 201(a)(3), (a)(4), (b)(1), (b)(2), (g)(2); 205(c)(2)(A); 1817(a)(1), (a)(2), (f)(1)
Estimate
Amount
Necessary to Pay Half of Benefits and Costs
Disabled under 65: 1839(a)(4)
65 and over: 1839(a)(1)
Offset by underpayment to State: 1003(b)(2)
Payable: 709(b)(2); 1876(a)(4)
Payable to State: 3(b)(1); 403(b)(1); 423(b)(1); 455(b)(1); 474(d)(1); 705(d), (f)(2); 1003(b)(1); 1403(b)(1); 1603(b)(1)*; 1903(d)(1)

Secretary HHS; Authority and Duty (Cont.)
Estimate (Cont.)
Amount (Cont.)
Reimbursement: 1886(d)(5)(D)(i)
Cost of home dialysis supplies: 1881(b)(6)(A)
Disbursements for quarter: 201(g)(1)(A)
Effect of conditions on amount due State: 403(b)(2)
Federal payment due State: 1903(s)(2)(C)
Individual who could be covered: 1844(b)
Overpayment to State: 1903(d)(5)
Reasonable cost of service: 1814(h)(2)
Wages deemed paid: 229(b)
Weighted aggregate premium: 1876(e)(3)(B)
Examine witnesses: 205(b)(1)
Exclude from participation; practitioner or person: 1156(b)(1)
Exercise no authority over State action: 402(a)(5); 1602(a)(5)*
Expenses: 703
Explain to public: 1862(d)(2)
Extend
Time Limit
Filing for court review of final decision: 205(g)
State Request for Court review: 218(t)(1)
Refund: 218(r)(2)
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Certified copy of transcript: 205(g)
Record after remand: 205(g)
Find
Acceptable
Prevailing charge: 1842(b)(3)
Statistical data and methodology: 1842(b)(3)
Access needed to assure correctness: 1842(b)(3)(E)
Accreditation by AOA assures conditions met: 1865(a)
Adequate services available: 1915(a)(1)(B)
Amount due for prior quarter: 403(b)(2)
Appropriate
Contract terms: 1876(i)(3)(D)
Criteria for renal disease network areas: 1881(c)(1)(A)
Desirable; supportive services: 1881(b)(9)(D)
Institution certified by State: 1864(a)
Medical and other evidence: 1833(f)(1)
Survey: 1864(c)
Terms and conditions: 1812(f)(1)
Basis for determination: 1862(d)(2)

Secretary HHS; Authority and Duty (Cont.)
Find (Cont.)
Block grant funds misspent: 506(b)(2)
Burial fund used: 1613(d)(3)
Carrier performance inadequate or inefficient: 1842(b)(4)
Compliance
Institutions accredited by JCAH: 1865(a)
State supplementation: 1618(b)
Consistent with
Effective and efficient administration: 1816(b)(1)(A)
Title XVIII; shorter period: 1842(b)(3)(B)(ii); 1866(a)(1)(B); 1870(b), (c)
Correct amount of payments due: 1631(b)(1)
Data not available: 1876(e)(1), (e)(3)
Demonstration project suitability: 1916(d)
Efficient and effective; carrier: 1842(b)(2)
Equal in value: 1876(g)(2)
Equipment economical and efficient: 1881(e)(1)
Error, misrepresentation, or inaction by government: 1837(h)
Excessive; charges: 1862(d)(1)(B)
Facts: 205(b)(1), (c)(7); 1631(c)(1)
Failed to carry out contract: 1876(i)(1)
Failure to Comply
Management information system: 402(e)(2)(B)
Prescribed requirements: 452(d)(2)(B)
Failure to enroll: 1837(d)
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Feasible and appropriate; return on capital: 1881(b)(2)(C)
Fraud elimination costs: 1903(a)(6)
Good cause: 1862(d)(1)(B)
Hospital closure; valid: 1884(b)
Impractical for person to sign request: 1814(a)(1); 1835(a)(1)
Incapability; application: 216(i)(2)(F)(i), (i)(2)(F)(ii)(III)
Institution has significant deficiencies: 1865(b)
Insufficient enrollment experience: 1876(g)(2)
Justified; higher prevailing charge: 1842(b)(3)
Limits; adjust; family size: 1903(f)(1)(B)(ii)
Necessary
Access to records: 1703
Administrative provisions: 1616(b)(2); 1631(g)(4)(B)

Secretary HHS; Authority and Duty (Cont.)
Find (Cont.)
Necessary (Cont.)
Conditions for payment to State: 426(b)
Contract terms: 1876(i)(3)(D)
Data; medicare supplemental policies: 1882(a)
Effective and efficient operation: 1861(o)(7)
Efficient operation: 402(a)(5); 1003(a)(3)
Financial security measures: 1861(o)(7)
Health and safety conditions: 1861(s)(end), (cc)(2)(I)
Information; mental retardation: 1703
Investigation: 455(b)(1); 1003(b)(1); 1603(b)(1)*
Personnel methods: 1602(a)(5)*
Proper and efficient administration: 474(a)(3); 1603(a)(4)*
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Provisions; State report: 1002(a)(6); 1602(a)(6)*
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Requirements: 1861(dd)(2)(G)
Test: 1861(s)(12)
Verification of report: 402(a)(6)
Needed
Agreement with hospital: 1861(l)
Appropriate; Terms
Agreement: 1816(c)
Conditions of contract: 1842(b)(3)
Conditions for
Diagnostic tests: 1861(s)(3)
Furnishing physical therapy services: 1861(p)
Health and safety: 1861(j)(15), (p)(4)(A)(v), (p)(4)(B)
Items and services furnished hospital patient: 1861(s)
Participation: 1861(o)(6); 1864(a)
Desirable; recommendations for legislative change: 1881(f)(8)
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Requirements
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Staffing requirements: 1861(f)(4), (g)(4)
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Secretary HHS; Authority and Duty (Cont.)
Find (Cont.)
Organization or publication that serves purpose: 1873
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Period when payment to be made: 1879(a)
Rates reasonably related to State analyses: 1861(v)(1)(E)(ii)
Reason for termination removed: 1866(c)(1), (d)
Reason removed; will not recur: 506(b)(3)
Reduction period: 224(b)
Satisfactory; State consultative service: 1864(a)
Standards essentially equal to JCAH: 1861(e)
State
Declined coordinated audits: 1129(a)
Did not have effective child support program: 403(h)
Disability determinations faulty: 221(a)
Failed to comply: 508(b)
Has adequate fire and safety code: 1861(j)(13)
Performance Does Not Meet
Plan provision requirement: 471(b); 1402(c)(2)
Plan requirement: 4; 404(a); 471(b); 1004; 1116(a)(2); 1404; 1604*; 1904
Substantial compliance by provider: 1866(f)(3)
Substantial failure to timely review long-stay cases: 1866(d)
Underpayment: 204(a)
Utilization review; assistance: 1816(b)(1)(B)
Waiver conditions met: 1861(e)(5)
Warranted; recommendations to Congress: 1881(c)(6)
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Fix
Compensation Rate for
HIBAC: 1867(a)
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Furnish
Explanation to providers: 1816(e)(3)
Information to Managing Trustee: 1817(f)(1)
Opportunity for Hearing to
Individual: 1862(d)(3); 1869(b)(1)
Institution or agency: 1869(c)
Provider: 1816(e)(3)(A); 1866(d)

Secretary HHS; Authority and Duty (Cont.)
Furnish (Cont.)
Opportunity for Hearing to (Cont.)
Provider; class: 1816(e)(3)(B)
Plans and reports to Secretary of Labor: 445(b)(3)
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Exception; physician charges: 1887(a)(2)(C)
Extension of time; annual report: 203(h)(1)(A)
Funds for research, training, or demonstration projects: 426
Hear; Hearing
Carrier; contract termination: 1842(b)(4)
Claimant
Application: 205(b)(1)
Disability determination: 221(d)
Earnings record: 205(c)(7)
Entitlement and benefits; medicare: 1869(b)(1)
Services furnished: 1862(d)(3)
SSI claim: 1631(c)(1)
Claimant's representative: 206(a); 1631(d)(2)
Hospital; transitional allowance: 1884(d)
Intermediate care facility: 1910(c)(2)
Person: 1156(b)(4)
Practitioner: 1156(b)(4)
Provider of Services
Designation: 1816(e)(3)(B)
Failure of performance: 1816(g)(2)
Institution or agency: 1869(c)
Services furnished: 1862(d)(3)
Skilled nursing facility: 1910(c)(2)
State
Block grant funds: 506(b)(2), (b)(3)
Federal payment withheld: 4; 404(a); 443; 1004; 1116(a)(2); 1404; 1604*; 1904
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Hold or use payments for Indian Health Service: 1880(c)
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Impose
Like requirements: 1863
Timetable for mechanization: 1903(r)(7)(B)
Improve data exchange: 1903(r)(6)(H)(iii)
Include objective standards: 1153(c)(7)
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Benefits; cost-of-living: 215(i)(2)(A)(ii)
Monthly premium rate: 1839(a)(3)(B)
Rate for payment of costs: 1861(v)(1)(E)(ii)
Secretary HHS; Authority and Duty (Cont.)
Incumbency change; court appeal unaffected: 205(g)
Indemnify individual for payment to provider: 1879(b)
Independence; review limited: 205(h)
Inform, earnings record data: 205(c)(2)(A)
Initiate
Pilot project for financial assistance: 1881(f)(1)
Proceeding to impose penalty: 1128A(b)(1)
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Investigate
Amount payable quarterly to State: 403(b)(1)
SSI beneficiary whereabouts and eligibility: 1631(i)(4)
Issue
Actuarial assumptions and bases; SMIB: 1839(a)(3)
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Limit reasonable costs: 1861(v)(1)(K)
Limits, reasonable charge: 1842(b)(3)(end)
Secretary of Labor; regulations; work incentive program: 439
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Subpena: 205(d)
Judge
Ability to perform peer review: 1152(2)
State
Compliance: 404(c)
System: 1886(c)(4)(end)
Uniformity of medical services, supplies and equipment: 1842(b)(3)
Justification for work deductions: 203(h)(3)
Maintain earnings records: 205(c)(2)(A)
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Advance monthly payment: 1876(a)(1)(D)
Agreement with State; capital expenditures: 1122(b)
Arrangement with State; disability determinations: 1633(a)
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Grant to State: 1702
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Secretary HHS; Authority and Duty (Cont.)
Make (Cont.)
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Support services to PRRB: 1878(i)
Disability determinations: 205(b)(2); 221(b)(1)
Eligible organization party: 1876(c)(5)(B)
Final decision; disability application: 216(i)(2)(G)
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No payment: 1903(u)(1)(A)
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State: 503(a)
Underpayment: 204(a)(2)
Provision for waiver of adjustment or recovery of overpayment: 1631(b)(1)
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Title II: 205(a)
Totalization agreements: 233(d)
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Agreement with State: 218(c)(4)
Requirement: 1902(j)
Time limits; mechanization requirements: 1903(r)(8)(C)
Modify or affirm finding: 205(g)
Modify or waive enrollment mix: 1876(f)(2)
Monitor implementation of waivers: 1915(e)(1)
Negotiate proposed contract: 1153(b)(1)
Not determine wages; Federal service: 205(p)(1)
Not enter contract: 1153(b)(2)(A); 1876(c)(1), (i)(4)
Not find State failure: 1618(c)
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Civil Service Commission of FSMI premiums: 1840(d)(1)
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Consumer Price Index excess: 215(i)(2)(C)(i)
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Governor; demonstration project: 1814(b)(end)
Hospital of lack of entitlement: 1814(e)
Individual and provider, why payment made: 1879(a)
Secretary HHS; Authority and Duty (Cont.)
Notify (Cont.)
Individual of indemnification: 1879(b)
Institution or person; overpayment to be recovered: 1914(c)
Intermediate care facility; cancellation of approval: 1910(c)(1)
Organization; contract not renewable: 1153(c)(4)
Public and facility; final decision: 1866(f)(3)
Public of charges in excess of necessary costs: 1866(a)(2)(B)(ii)(I)
Railroad Retirement Board; jurisdiction: 210(l)(4)(B)
Skilled nursing facility; cancellation of approval: 1910(c)(1)
State (or State Agency)
Approval/disapproval of State system: 1903(r)(4)(A)
Assessed amount due: 218(q)(3)
Basis for decision: 218(s)
Cancellation of approval: 1910(c)(1)
Chief executive officer: 508(b)
Disapproval; work incentive demonstration program: 445(b)(2)
Federal payment withheld: 4; 404(a); 443; 471(b); 1004; 1116(a)(2); 1404; 1604*; 1904
Hearing right: 4; 221(b)(1); 404(a); 443; 471(b); 1004; 1116(a)(2); 1404; 1604*; 1904
Licensing authority: 1128(a)(3)
Overpayment to be adjusted: 1914(c)
Payment suspension; disability cessation question: 225(a)
Person convicted of crime: 1128(a)(2), (b)(2)
Proposed systems procedures, standards, and requirements: 1903(r)(6)(E)
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Termination of provider agreement: 1866(c)(3)
Notify of Right to Hearing
Carrier: 1842(b)(4)
Claimant: 205(b)(1); 1631(c)(1); 1862(d)(3)
Claimant's representative: 206(a); 1631(d)(2)
Person: 1156(b)(4)
Physician: 1128(d)
Practitioner: 1156(b)(4)
Provider: 1816(e)(3)(B), (g)(2); 1862(d)(3); 1869(c)

Secretary HHS; Authority and Duty (Cont.)
Not Include
Items as reasonable cost: 1861(v)(1)(H)
Non-reasonable cost data: 1887(b)(1)
Provider costs: 1861(v)(1)(I)
Not Make
Decision without notice: 1866(f)(2)
Payment: 403(i)(1)(A)
Not Recognize
As reasonable: 1886(a)(1)(A)(i)
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Not Require
Report corrected practices of contractor or provider: 1106(e)
State manual availability: 1002(b)(2); 1602(b)(end)*
Obtain
Advice and recommendation of specialist: 1110(a)(2)
Federal or State record; child support program: 453(b)(2)
File, record, report, or other paper: 1106(a)
Information; earnings record: 205(c)(2)(A)
Offset
Block grant funds misspent: 506(b)(2); 2006(b)
Overpayment to State: 1903(d)(5)
Pay
Adjusted amount to State: 1603(b)(2)*
Dialysis services: 1881(b)(4)
End-stage renal disease: 1881(b)(3)
Installments to State; child support: 455(b)(2)
On Basis of
Reasonable rate per unit: 1861(v)(5)(B)
Target reimbursement rate: 1881(b)(4)
Organization under contract: 1157(d)
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Secretary of Labor the State's share: 443
State
Adjusted amount: 1903(d)(2)
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Amount withheld from beneficiary: 1631(g)(1)
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Certain functions: 1864(b)
Child support program: 455(a)
Death records: 205(r)(2)
Foster home care: 474(d)(2)
Secretary HHS; Authority and Duty (Cont.)
Pay (Cont.)
State (Cont.)
Medical and social services for handicapped: 1620(d)
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Optional State supplementation refund: 1631(i)(2)
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SSI beneficiaries: 1602
SSI beneficiaries; optional State supplementation: 1616(a)
Travel expenses; disability claim: 1631(h)
Utilization and quality control peer review organization: 1866(a)(1)(F)(i)
Permit
Costs attributable to program: 409(d)
Exception
Services: 1002(a)
Statewideness: 1602(a)(1)*
Payment for trainee: 426(a)(1)(C)
Physician-patient interference prohibited: 216(i)(1)
Prescribe
Accounting procedures: 1876(h)(4)(A)
Assurances of satisfactory performance: 1902(d)
Audit coordination and joint conduct: 1902(a)(42)(B)
Circumstances; ineligibility; trade or business: 1611(d)
Cooperative arrangements: 1902(a)(11)
Criteria; unearned income: 1612(b)(3)(A)
Duties and functions of network organizations: 1881(c)(2)
Earned income disregard: 402(a)(8)(A)(ii), (a)(8)(A)(iii), (a)(31)
Format and manner: 1160(b)(2)
Guidelines; nurse-midwife: 1905(m)
Information requirements; child support program: 455(d)
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Jointly with Secretary of Labor; regulations; continuation of services: 436(b)
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Disclosure of information: 1106(b)
Earned income; student: 1612(b)(1)
Necessary drugs or services; disabled person: 1612(b)(4)(B)(ii); 1614(a)(3)(D)

Secretary HHS; Authority and Duty (Cont.)
Prescribe (Cont.)
Limitations (Cont.)
Resources essential to self-support: 1613(a)(3)
Manner and form of request for return of child: 472(g)
Manner for provider to identify excess charges: 1866(a)(2)(B)(ii)(II)
$100 rounding: 1903(f)(1)(C)
Period
Employment reduced: 402(a)(8)(B)(i)(I)
Employment refused: 402(a)(8)(B)(i)(II)
Offer of work: 407(b)(1)(B)
Requesting hearing; earnings record revision: 205(c)(7)
Time; resources disposition: 1613(b)
Procedures and conditions: 1876(c)(3)(C)
Reasonable limits; earnings excludable: 223(d)(4)
Regulations
Adjustment for excess payment: 1870(b)
Adjustment of
State tax payment: 218(h)(2)
Underpayment: 204(a)
Adjustment or recovery of overpayment: 204(a)
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SSI program, including evidence and proof: 1631(d)(1)
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Parent Locator Service information: 453(d)
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Authorized person to represent dependent child; Parent Locator Service: 453(c)(3)
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Claimant's representative; recognition requirements: 206(a)
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Criteria
Audit requests: 1861(v)(1)(I)(end)
Substantial gainful activity: 1614(a)(3)(D)
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Dialysis services: 1881(b)
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Determination: 221(g)
Secretary HHS; Authority and Duty (Cont.)
Prescribe (Cont.)
Regulations (Cont.)
Disability (Cont.)
Level of severity: 223(d)(2)(B)
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Interest on assistance: 1612(b)(12)
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Disclosure; tax return information: 1106(a)
Earnings; substantial gainful activity: 223(d)(4)
Entitlement and amount of benefits: 1869(a)
"Full-time" attendance; define: 202(d)(7)(A)
Good cause for failure to timely report deduction event: 203(l)
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Hospital; customary charge: 1903(i)(3)
Husband's reduced benefit: 202(q)(5)(A)(i)
Incapable of filing application: 216(i)(2)(F)(i)
Information period: 1866(b)(2)(C)(ii)
Itemized bill requirements: 1814(d)(2); 1835(b)(2)
Kidney donation reimbursement: 1881(d)
Limit representative's fee: 206(a)
Limits; burial space: 1613(a)(2)(B)
Manner, form and time; election to be paid: 223(g)(1)
Maximum fee for representation of beneficiary: 1631(d)(2)
MA to resident absent from State: 1902(a)(16)
Medicare supplemental policy certification procedure: 1882(h)
Membership in network organization: 1881(c)(1)(C)
Methods and procedures: 1881(b)(2)(B)
Nonpayment; public assistance: 228(d)
Organizational requirements: 454(3)
Parent Locator Service use in parental kidnaping: 463(b)
Payment frequency: 228(c)(8); 1631(a)(1)
Period aid will be denied: 402(a)(19)(F)
Physical therapist standards: 1861(p)
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Secretary HHS; Authority and Duty (Cont.)
Prescribe (Cont.)
Regulations (Cont.)
Preadmission diagnostic services: 1833(a)(1)(F)(i), (a)(1)(F)(ii), (a)(5)
Premiums deducted from benefits: 1840(a)(1), (b)(1)
Provider or facility; agreement requirements: 1881(b)(5)
Public emergency shelter for homeless: 1611(e)(1)(D)
Quantity limit; antigens: 1861(s)(2)(G)
RRB contract with carrier: 1842(g)
Ranges of income: 1631(a)(3)
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Report by State of wages paid: 218(e)(1)(B)
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Standards; inpatient services; psychiatric hospital: 1905(h)(1)(B)(i)
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SMI premiums; payment: 1840(e)
Test of reasonableness: 1814(i)(1); 1902(a)(13)(B)
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Training, education, and experience: 1861(aa)(3)
Utilization review plan: 1861(cc)(2)(G)
Wife's reduced benefit: 202(q)(5)(A)(i)
Written request filing requirements: 1814(a)(1); 1835(a)(1)
Requirements
Corroborative evidence: 1631(e)(1)(B)
Filing of application: 1631(e)(1)
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